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Supreme Court of the United States

OCTOBER TERM, 1951

No. 493

ISBRANDTSEN COMPANY, INC., PETITIONER,

vs.

MATTHEW JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 26, 1951

CERTIORARI GRANTED MARCH 3, 1952

SUPREME COURT OF THE UNITED STATES

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Appendix.

RELEVANT DOCKET ENTRIES.

Oct. 27, 1948.	Libel filed.
Oct. 27, 1948.	Citation exit—returnable November 12, 1948.
Nov. 18, 1948.	Citation returned—"on October 29, 1948 served" and filed.
Nov. 18, 1948.	Answer filed.
Dec. 16, 1948.	Order to place case on the Trial List, filed.
Jan. 25, 1949.	Respondent's answers to interrogatories, filed.
July 18, 1949.	Respondent's notice of taking deposition of Libellant, filed.
July 18, 1949.	Respondent's Interrogatory to Libellant, filed.
Jan. 16, 1950.	Respondent's Notice of taking deposition of Walter R. Herron, filed.
Jan. 18, 1950.	Respondent's supplemental answer to interrogatories, filed.
Jan. 26, 1950.	Trial (Kirkpatrick, J.) Witnesses sworn. C. A. V.
Jan 26, 1950.	Stipulation of counsel amending complaint and answer, filed.
Jan. 26, 1950.	Stipulation of counsel as to certain facts, filed.
Feb. 10, 1950.	Deposition of Walter R. Herron, filed.
Mar. 27, 1950.	Argued sur pleadings and proofs. C. A. V.
May 19, 1950.	Opinion, Kirkpatrick, J., awarding libellant wages, interest, costs and transportation, filed.

June 21, 1950. Final Decree in favor of libellant in $573.55 with interest at 6% from June 3, 1948 and costs, filed.

Aug. 28, 1950. Libellant's bill of costs, filed.

Sept. 19, 1950. Respondent's notice of appeal, filed.

Sept. 19, 1950. Copy of Clerk's Notice to United States Court of Appeals, filed.

LIBEL IN PERSONAM.

INTERROGATORIES.

To the Honorable, the Judges of the Said Court:

The libel and complaint of MATHEW JOHNSON against ISBRANDTSEN COMPANY, INCORPORATED, in a cause of action, civil and maritime, respectfully represent:

1. Libellant is a seaman in the United States Merchant Marine.

2. Respondent is a corporation duly organized and existing under and by virtue of the laws of the State of New York.

3. Libellant, upon information and belief, avers that, at all times hereinafter mentioned, respondent possessed, operated, managed and controlled the S. S. "Stephen W. Kearney", in foreign commerce.

4. On or about the 3rd day of February, 1948, libellant entered the employ of respondent as a member of the crew of the S. S. "Stephen W. Kearney", in the capacity of Messman, at the rate of $166.95 per month, plus overtime and found, under foreign shipping articles, for a period not exceeding nine calendar months.

5. On or about March 29, 1948, an entry was made in the official log of the vessel by the Master that libellant brought a woman on board the ship, interfered with and pushed the Chief Officer, used abusive language and refused to obey the orders of the Chief Officer, and that libellant was therefore fined four-days' pay ($22.26) for insubordination.

6. On or about March 29, 1948, an entry was made in the official log book of the vessel by the Master that libellant continued wilful disobedience of orders in refusing to come to the Master's quarters; and that libellant was there-

fore put in irons until the disobedience ceased and fined twelve-days' pay ($66.78).

7. The allegations made against libellant in the official log book hereinabove referred to are untrue and without justification.

8. Libellant was not furnished with a copy of such entry, nor was the entry read to him, nor was he given an opportunity to reply thereto, as required by R. S. 4597, 46 U. S. C. A. 702.

9. Libellant was discharged from the service of the vessel on May 31, 1948. At that time, libellant had earned wages in the amount of $750.27, which respondent has wrongfully failed and refused to pay libellant.

SECOND CAUSE OF ACTION.

Libellant re-alleges all of the facts set forth in the first cause of action and, in addition thereto, respectfully represents:

10. Libellant was discharged from the vessel at Philadelphia on May 31, 1948, and will be compelled personally to pay the cost of transportation back to Seattle, Washington, the port of signing on, amounting to $125.00.

11. Libellant has made repeated demands for the wages and transportation costs due him, but the same have been refused by respondent.

12. By reason of the aforesaid, libellant makes further claim for the earned wages due him and for two-days' pay for each day that payment has been withheld without cause, under R. S. Section 4529.

13. During the entire period libellant was employed, he well and truly performed all his duties and was obedient to all lawful commands of the Master and other officers of the said vessel.

14. All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that a citation in due form of law according to the rules and practices of this Honorable Court, in a cause of admiralty and maritime jurisdiction may issue against said respondent herein, citing it to appear and answer all and singular the matters aforesaid and that the libellant may have judgment for the amount of his claims aforesaid with interest and costs and such other and further relief as the Court may deem just.

J. TAYLOR BUCKLEY,

FREEDMAN, LANDY AND LORRY,

By /s/ MARTIN J. VIGDERMAN,

Proctors for Libellant.

COMMONWEALTH OF PENNSYLVANIA,
COUTY OF PHILADELPHIA, } *ss.:*

MARTIN J. VIGDERMAN, being duly sworn according to law, deposes and says that he is associated with the firm of Freedman, Landy and Lorry, proctors for the within libellant; that the facts set forth in the foregoing Libel are true and correct to the best of his knowledge, information and belief.

/s/ MARTIN J. VIGDERMAN.

Sworn to and subscribed before me this 26 day of Oct., 1948.

JESSIE D. VALENTI,
Notary Public.

ANSWER.

To the Honorable, the Judges of the Said Court:

The Answer of Isbrandtsen Company, Inc., incorrectly designated in the caption as Isbrandtsen Company, Incorporated, to the Libel and Complaint of Mathew Johnson in an alleged cause of action for wages and statutory penalties, Civil and Maritime, respectfully represents, upon information and belief, as follows:

1. Respondent denies that it has knowledge or information sufficient to form a belief regarding the status of the Libellant at the time of the filing of the within Libel, but admits that Libellant was a seaman on a vessel of United States registry during his service aboard the Steamship "Stephen W. Kearny".

2. Respondent admits the allegations of the second article of the Libel.

3. Respondent denies the allegations of the third article of the Libel and avers, to the contrary, that the Steamship "Stephen W. Kearny" was owned by the United States of America and that said vessel was operated and controlled by the Respondent herein pursuant to the terms of a Bareboat Charter. Respondent further admits that the Steamship "Stephen W. Kearny" was engaged in foreign commerce.

4. Respondent denies the allegations of the fourth article of the Libel as statements of conclusions with reference to the terms of a written contract. It avers that Libellant herein was aboard the Steamship "Stephen W. Kearny" pursuant to the terms of a written contract embodied in the Shipping Articles of said vessel and not otherwise. Said contract is a matter of public record in the Office of the United States Shipping Commissioner and available to Libellant.

5. Respondent denies the allegations of the fifth article of the Libel, but admits that Libellant was logged on the date in question in an amount and for an offense as set forth in the Official Log Book of the vessel. Said Official Log Book of the vessel is in the custody of the United States Shipping Commissioner and available to Libellant.

6. Respondent denies the allegations of the sixth article of the Libel, but admits that Libellant was logged on the date in question in an amount and for an offense as set forth in the Official Log Book of the vessel. Said Official Log Book of the vessel is in the custody of the United States Shipping Commissioner and available to Libellant.

7. Respondent denies the allegations of the seventh article of the Libel.

8. Respondent denies the allegations of the eighth article of the Libel.

9. Respondent denies the allegations of the ninth article of the Libel.

ANSWERING THE SECOND CAUSE OF ACTION, THE RESPONDENT REITERATES AND REALLEGES THE FOREGOING ALLEGATIONS AND DENIALS OF THIS ANSWER AND AVERS, UPON INFORMATION AND RELIEF, AS FOLLOWS:

10. The Respondent denies the averments of the tenth article of the Libel as stated. It admits that the employment of the Libellant on board the Steamship "Stephen W. Kearny" was terminated on or about May 31st, 1948. It denies that it has information sufficient to form a belief as to the remaining averments of the tenth article of the Libel and accordingly denies the same and demands proof thereof.

11. The Respondent denies the allegations of the eleventh article of the Libel as stated. It admits that the Libellant has made demands for wages and other sums

and it admits that it has refused to pay them. It denies that the Libellant is entitled to receive or to demand money from the Respondent either on account of wages, transportation or for any other reason.

12. The Respondent denies that it is required to answer the allegations of the twelfth article of the Libel with respect to the claims made by the Libellant, but the Respondent denies that the Libellant is entitled to recover earned wages or penalties as provided under R.S. 4529.

13. The Respondent denies the allegations of the thirteenth article of the Libel.

14. The Respondent denies that, all and singular, the premises are true and it admits the admiralty and maritime jurisdiction of this Honorable Court.

FURTHER ANSWERING THE LIBEL, AND AS SEPARATE, COMPLETE AND AFFIRMATIVE DEFENSES THERETO AND BY WAY OF A COUNTERCLAIM, THE RESPONDENT AVERS, UPON INFORMATION AND BELIEF, AS FOLLOWS:

15. On or about April 21st, 1948 the Libellant engaged in a personal altercation with one Willis Brandon, Jr. in which the Libellant viciously attacked the said Brandon with a deadly weapon, wounding the said Brandon and necessitating the diversion of the vessel from its course in order to obtain hospitalization for the said Brandon. The Respondent further avers that upon completion of the voyage and arrival of the vessel in Philadelphia, Libellant was arrested by the Police Authorities of the Federal Government and taken into custody by them. The Respondent avers that the Libellant was guilty of insubordination, improper conduct and wilful disobedience during the period of his service on board the Steamship "Stephen W. Kearny". It avers that the license or certificate of the Libellant was revoked by the United States Coast Guard as a result of the said insubordination misconduct and wilful disobedience of lawful orders. It avers that the fines

which were entered in the log as having been deducted from the pay of the Libellant were lawful fines in accordance with the provisions of the applicable statutes, customs and regulations, covering the relationship of the parties.

16. By reason of the assault committed by the Libellant upon Willis Brandon, Jr., as aforesaid, the Respondent diverted its vessel from its course, it incurred expenses in connection with the treatment, hospitalization and transportation of the said Brandon, it incurred losses in connection with the diversion of the vessel and was otherwise damaged in a sum approximating Twenty-Five Hundred Dollars ($2500.00), as near as the sum can now be established. The Respondent avers that a portion of the wages which would have otherwise been due to the Libellant have been lawfully retained by it on account of its said loss and it claims the balance of its said loss from the Libellant.

WHEREFORE, the Respondent prays that the Libel herein filed against it by the Libellant shall be dismissed and prays that it may have judgment against the Libellant upon its counterclaim and that it may have such other and further relief as may seem just to this Honorable Court in the premises.

KRUSEN, EVANS AND SHAW,

By /s/ THOMAS E. BYRNE, JR.,
Proctors for Respondent.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *ss.:*
CITY AND COUNTY OF PHILADELPHIA,

THOMAS E. BYRNE, JR., being duly sworn according to law, deposes and says that he is a member of the Bar of the United States District Court for the Eastern District of Pennsylvania; that he is a member of the Firm of Krusen, Evans and Shaw; Proctors for the Respondent in the within cause; that he is authorized and instructed to verify and file the within Answer; and that the facts and allegations thereof are true to the best of his knowledge, information and belief, the source of his information and belief being statements and reports of witnesses.

THOMAS E. BYRNE, JR.

Sworn to and subscribed before me this 18th day of November, A. D. 1948.

/s/ M. V. TOBIN.

STIPULATION.

It is agreed and stipulated by and between the parties that the Libel in the above action be amended by withdrawing therefrom Paragraphs 5, 6, 7 and 8, and by amending Paragraph 9 to read as follows:

> "Libellant was discharged from the service of the vessel on May 31, 1948. At that time Libellant had earned wages in the gross amount of $750.27 and a net amount of wages amounting to $439.27, after proper deductions, which Respondent has failed and refused to pay to Libellant."

It is further agreed and stipulated by and between the parties that the Answer to the Libel in the above action be amended by withdrawing therefrom Paragraphs 5, 6, 7 and 8, and by amending Paragraph 9 to read as follows:

> "Respondent admits that as of April 21, 1948, there had accrued to Libellant wages in the net amount of $439.27, which amount Respondent has refused to pay. Respondent denies that Libellant is entitled to receive or to demand the sum of $439.27 or any part thereof, for reasons which will hereinafter more fully appear. The remaining averments of Paragraph 9 of the Libel are denied."

FREEDMAN, LANDY & LORRY,

By /s/ WILLIAM M. ALPER,
Proctors for Libellant.

KRUSEN, EVANS & SHAW,

By /s/ MARK D. ALSPACH,
Proctors for Respondent.

Dated: January 20, 1950.

STIPULATION OF FACTS.

1. On April 21, 1948 at about 11:50 P. M., the vessel changed course and proceeded to Nuku'alofa, Tonga to obtain medical aid and hospitalization for Brandon for injuries resulting from the stab wound inflicted by Johnson.

2. The expenses incurred and paid by the Respondent as a result of the foregoing incident, set forth in Paragraph 1, are as follows:

(a) For the hospitalization, medical care, repatriation and subsistence for Brandon—	$ 851.44
(b) Expenses for deviation of vessel, pilotage, manifests and harbor dues at Tonga, fuel consumed, food for crew	840.11
Total	$1691.55

3. At the conclusion of the voyage in Philadelphia on or about May 31, 1948, Johnson was removed from the vessel by federal police authorities and was held for indictment and trial under bail, and was confined in prison until June 11, 1948 when he was tried under criminal indictment of four counts arising inter alia, out of the above described incident. The officer on watch knew and the Master was subsequently informed that Johnson was removed from the vessel under arrest as aforesaid.

4. Johnson was not present at the pay-off of the crew on June 3, 1948. On June 11, 1948 Johnson's attorney made demand by telephone call to the main office of the respondent requesting payment of claimed wages which was refused.

5. Respondent refused and has at all times pertinent hereto refused to pay Johnson's claimed wages because it set-off the wages earned by Johnson up to April 21, 1948, against the expenses described in Paragraph 2. No wages

were credited to the libellant by the respondent after April 21, 1948 and no claim is being made by the libellant for wages after April 21, 1948.

6. The present stipulation is entered into for the purposes of this action only and is without prejudice to and cannot be used for or against either party in any other proceeding wherein either party is involved.

FREEDMAN, LANDY AND LORRY,

By /s/ WILLIAM M. ALPER,
Proctors for Libellant.

KRUSEN, EVANS AND SHAW,

By /s/ MARK D. ALSPACH,
Proctors for Respondent.

OPINION

Sur Pleadings and Proof.

Before KIRKPATRICK, *Ch. J.*

In this suit in admiralty the libellant seeks to recover earned wages, double wages under the provisions of R. S. 4529, 46 U. S. C. A. 596, and transportation from Philadelphia to Seattle under the shipping articles. The amount of earned wages is $439.27.

The facts upon which the respondent's affirmative defense and counterclaim are based are fully established by the evidence. I find that while at sea the libellant without justification attacked another member of the crew with a knife and wounded him so severely that it was necessary to divert the vessel from its course in order to get him to a hospital. As a result of the assault and diversion the respondent incurred expenses and losses amounting to $1,691.55. The respondent at the termination of the voyage refused and still refuses to pay the libellant his wages.

It seems perfectly clear that the statute not only does not authorize but forbids the withholding of wages in a situation of this kind. The positive mandate of Sec. 596 that the master of the vessel "shall pay to every seaman his wages" within the times specified admits of no interpretation by which any exceptions, other than those expressly provided by other sections of the statute, can be allowed. The derelictions of the seaman for which his wages may be forfeited are embodied in Sec. 701, which is obviously intended as a complete coverage of the subject of penalties and forfeitures. Causing loss to the vessel's owner by wilfully injuring a fellow seaman is not among them and the phrase "wilfully damaging the vessel" in the 7th paragraph of Sec. 701 cannot be stretched to cover it.

The respondent bases its contention mainly not upon the statute but upon the early rule, announced in several decisions antedating the statute, that such damages as this respondent has suffered may be set off against the claim

for wages. This rule, the respondent says, has not lost its vitality and has survived the statute in the form of a right of equitable recoupment. In the face of the plain provisions of the statute I am unable to accept this view. If it should be held that the equitable right of recoupment still exists, one can see that it could be extended by asserting it in such a variety of cases of misconduct that the abuses that the law was enacted to do away with could easily become prevalent again.

The question whether the two to one penalty of Sec. 596 must be imposed is a much more difficult one. In Collie v. Fergusson, 281 U. S. 52, 56, the Supreme Court stated the general rule as "That the liability is not incurred where the refusal to pay is in some reasonable degree morally justified or where the demand for wages cannot be satisfied either by the owner or his interest in the ship, has been the conclusion reached with practical unanimity by the lower federal courts." It may be that there was and is practical unanimity in the lower federal courts so far as the general principle is concerned but it is almost impossible to reconcile the way in which the courts have applied it to the various fact situations which the cases presented. In the present case the sufficient cause pleaded for the withholding is an apparently honest, though mistaken belief, that it was justified by law. In Burns v. Fred L. Davis Co., 271 Fed. 439, the Court imposed a penalty for withholding wages because of an outstanding attachment issued by a state court. It was so plain that the attachment was illegal and ineffective that the Court said that there was no justification. It almost seems as though the Court felt that the existence of the attachment was merely an excuse or pretext. On the other hand in The City of Montgomery, 210 Fed. 673, the Court held that what turned out to be a misconception of the effect of the shipping articles in the light of their practical construction by the parties supplied a cause for withholding, sufficient to avoid the penalty.

I suppose that even the sense of outrage (which under the circumstances of this case I can well understand) that the respondent may have felt in being met with this libellant's demand for wages would not of itself constitute sufficient cause, though it comes close to making the withholding "in some reasonable degree morally justified" in the language of Mr. Justice Stone in the Collie case, supra. However, this respondent had more than merely a grievance. In Oldfield v. The Arthur P. Fairfield, 176 F. 2d 429, 431, decided, it is true, after the respondent in this case first refused to pay the libellant his wages the Court of Appeals for the 9th Circuit said "We are of opinion the Act, which was passed to mitigate the intolerable conditions of seamen then existing, cannot be construed as an abolition of the amount of equitable right of recoupment by a shipowner from a seaman who has caused loss to the ship by a wilfull violation of the laws of another country." This appears to be at variance with the view reached in this opinion to the effect that the equitable right of recoupment did not survive the statute. True, in the Oldfield case, supra, the Court had a case of smuggling which turned on the very narrow question of whether it was necessary that the seaman be actually convicted of the offense and that, in view of the provisions of Sec. 705, might possibly be a ground of distinction. However that may be, I do not think that the respondent should be penalized for relying upon a principle which a Court of Appeals has recently declared as the law, although in a case involving somewhat different circumstances.

I understand that the respondent does not dispute the fact that the libellant signed on at Seattle and was discharged at Philadelphia. The shipping articles provide that "Standard Fly Award Transportation Applies." The union agreement incorporates that portion of the Fly Award relating to transportation. It liquidates the amount due in case the seaman does not wish to accept transporta-

tion. I think that this figure must be considered an item of wages within the meaning of Sec. 576 and, therefore, what has been said with respect to the respondent's defense to the wage claim applies to the claim for transportation.

My conclusion is that the libellant recover wages, interest, costs and transportation, but not the penalty.

FINAL DECREE.

AND Now, to wit, this 21st day of June, 1950, pursuant to the Opinion filed by this Court on May 19, 1950, it is hereby

ORDERED, ADJUDGED AND DECREED, that judgment be entered for the libellant and against the respondent in the amount of $573.55, with interest at the rate of 6%, from June 3, 1948, and that libellant recover costs.

/s/ KIRKPATRICK,
U. S. D. J.

[fol. 19] INDEX OF APPELLEE'S SUPPLEMENTAL APPENDIX

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(Received & Filed February 5, 1951. Ida O. Creskoff, Clerk.)

[fol. 20] APPELLEE'S SUPPLEMENTAL APPENDIX

Testimony of WALTER R. HERRON.

* * * * * * *

(Page 2) Direct examination.

By Mr. Alspach:

Q. What is your full name, Captain?
A. Walter R. Herron.

* * * * * * *

Q. Captain, were you the master of the steamship "Stephen W. Kearny" on the voyage during April of 1948, during which Wells Brandon was injured?
A. I was.

* * * * * * *

(Page 12) Cross-examination:

* * * * * * *

(Page 14)

By Mr. Alper:

Q. Now, what happened to Johnson when you got to Philadelphia?
A. Well, immediately before arriving in Philadelphia I had sent a radiogram and also a message with the quarantine doctor requesting that the United States Marshal be [fol. 21] down to take him off on arrival.

Q. Did the United States Marshal take him off?

A. I am getting to that. We arrived up here very late in the evening, and nobody showed up that night, and I came ashore the next morning and was getting the papers ready for entry of my ship, and working on the pay-off, and while I was gone the United States Marshal with some other men came aboard and removed Johnson. I didn't see who they were.

Q. Did you know who made the arrangements for the Marshal (P. 15) to come on board?

A. The ship's agent here, I imagine.

Mr. Alspach: Well, if you don't absolutely know, Captain, I would rather you not express any guess.

By Mr. Alper:

Q. You did say you made one request?

A. Yes, I made a request.

Q. When you came in, you asked the quarantine doctor to take a message back?

A. Yes, that message was addressed to Lavino Brothers, the agents here.

Q. To the agents, all right. When you came back to the ship, you were told he had been taken off, is that right?

A. Yes, sir.

[fol. 22] Q. Did you find out what happened to him?

A. I understand he was taken to the Federal Penitentiary here, or Federal Detention, or whatever you call it.

Q. How long did you remain in Philadelphia after that?

A. About a week.

Q. Were you in Philadelphia at the time his case came up for trial?

A. I was.

Q. Did you appear at the trial?

A. I wasn't asked to appear there.

(P. 16)

Q. Well, did you or didn't you appear?

A. No.

Q. Did the ship remain here during that week?

A. Yes, sir.

Q. Were you interviewed by the FBI?

A. I don't recall any interview.

Q. Were you interviewed by the United States Attorney, anyone from the United States Attorney's office about the——

A. Not that I recall.

Q. Did you know where this man was during that week?

A. Only that he was in the Federal Detention Home, or whatever they call it. I knowed he was in a court trial. I know the court trial was on because I released several mem-

[fol. 23] bers of the crew to attend the trial.

Q. When was the pay-off? When did the rest of the crew get paid off?

A. Here in Philadelphia.

Q. How long after you came into port?

A. About 48 hours.

Q. Was the pay-off on the ship?

A. Yes, sir.

Q. And the United States Shipping Commissioner was there?

A. Yes, sir.

Q. Was Johnson there?

(P-17)

A. No.

Q. He was at that time then in custody some place?

A. Yes, sir.

Q. The Federal authorities, is that right?

A. Yes, sir.

Q. Did you have any communication with Isbrandtsen Company before the pay-offs, or with Lavino, whom you say were their agents here, is that right?

A. Well, I was in New York office. I went to New York.

Q. Before the pay-off?

A. Yes, sir.

[fol. 24] Q. Did you have any communication or discussions with Isbrandtsen with regard to whether or not Johnson should be paid?

A. No, sir.

Mr. Alspach: There is an objection to that, Mr. Alper.

The Witness: No, sir, I did not.

By Mr. Alper:

Q. You did not. Did you log Johnson in connection with the stabbing incident in which Wells Brandon was injured?

A. No, sir.

Q. Did you make any entry in the official log with respect to any deduction to be made from his pay arising out of that (P. 18) stabbing incident?

A. No, sir, I did not. I put the case purely up to the future jurisdiction of the United States courts. That is the only entry in the logbook.

Q. At any time up until the time of the pay-off, did you yourself make any decision with regard to whether or not Johnson should be paid, or to what extent he should be paid?

A. I did not, no, sir.

Q. Do you know whether Isbrandtsen made any such decision?

Mr. Alspach: That is objected to.

The Witness: No, sir, I do not.

By Mr. Alper:

Q. Did you compute the expenses incurred by the ship in connection with the diversion of the ship to get medical aid for Brandon?

[fol. 25] A. That is impossible for me to do aboard the ship.

Q. Well, did you or didn't you?

A. No, sir.

Q. You didn't do it. At the time of the pay-off, did you know what that expense was?

A. I know it was quite high. I had no idea, though, exactly how much. I know it was quite high, because that vessel's expense was around $1.10 a mile alone.

* * * * * * *

(P. 20)

Q. You went up to New York before the pay-off, didn't you?

A. Yes, sir.

Q. And the company produced money in Philadelphia to pay the men off the ship, is that right?

A. No, sir, the pay accounts were made up by the paymasters in New York, and then a certified check was sent here and the money was picked up here when I came back with the pay rolls.

Q. And did you go over the pay roll with the paymaster?

A. Yes, sir.

Q. What decision was made at that time with regard to Brandon's pay and Johnson's pay?

[fol. 26] Mr. Alspach: I object to that.

The Witness: So far as I know, their wages (P. 21) were left blank. On neither case was there any lines filled out on them.

By Mr. Alper:

Q. Did you inquire what you should do about that?

A. No, sir.

* * * * * * *

Portion of Cross-Examination of Wells Brandon, Jr., a Witness Called On Behalf of the Respondent

WELLS BRANDON, JR., having been duly sworn was examined and testified as follows:

By Mr. Alper:

Q. Did you ever get your pay for that voyage?

Mr. Alspach: I object to that Your Honor. That is irrelevant to this issue.

The Court: Well, I think it irrelevant. I don't know how it is relevant.

Mr. Alper: All right.

By Mr. Alper:

Q. Did you ever make a claim against the Isbrandtsen Company arising out of this voyage?

[fol. 27] Mr. Alspach: I object to that also Your Honor.

The Court: I will take it subject to the objection.

By The Court:

Q. Did you make any claim against Isbrandtsen as a result of what occurred on this voyage?
A. I did.

By Mr. Alper:

Q. What was the claim for?
A. It was for damages and my wages.
Q. After you filed your claim was that claim settled?
A. No, it wasn't.
Q. Were you ever paid your wages?
A. No, I wasn't.
Q. All right. You came up to Philadelphia voluntarily?
A. Yes.
Q. To testify in this case?
A. Yes.
Q. Were your expenses paid?
A. Just expenses, yes.
Q. Just your expenses?
A. And loss of time for being away.

[fol. 28] National Maritime Union Agreement With Isbrandtsen Company, Inc.—Fly Award On Transportation

"Section 3. Traveling. (a) Members of the Union, when transported by the Company during the course of their employment, shall be provided with first class transportation by rail and with subsistence at the rate of four dollars ($4.00) per day, in addition to their regular monthly wage. When traveling at night is involved, a berth must be provided.

(b) In the event that a vessel terminates a voyage in a port other than the original port of engagement, first class transportation, including berth where necessary, wages and subsistence at $4.00 a day back to the port of original engagement shall be furnished to each member of the Unlicensed Personnel. At the request of the individual crew members, each such member of the Unlicensed Personnel shall be paid in cash the amount equivalent to first class railroad transportation plus twenty percent (20%) thereof. A cash settlement shall not include pullman berth or seat or tax.

The above will apply under the following conditions:

1. After completion of any foreign voyage, except nearby foreign voyages from Atlantic and Gulf Coast ports to [fol. 29] points in the West Indies, Central America, and the northern coast of South America.

2. After completion of a coastwise, intercoastal or nearby foreign voyage as specified above, at the end of sixty (60) days' employment.

3. After termination of the crewmembers' employment in a continental United States port, regardless of type of voyage or length or employment if:

a. The vessel was laid up, sold or transferred.

b. The vessel was shipwrecked or otherwise lost.

c. Employment was terminated for illness or injury requiring hospitalization.

(c.) Port of original engagement shall mean the port in the continental United States where the crew member is first engaged by the Company, regardless of type of articles signed.

(d.) No crew member shall be entitled to transportation if he continues employment on the vessel. (Agreement, August 18, 1948)."

[fol. 30] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON, *Appellee*,

vs.

ISBRANDTSEN COMPANY, INC., *Appellant*.

STIPULATION

Subject to the approval of this Court, it is hereby stipulated by and between counsel for the parties that the time within which the Appellant may prepare and file its brief and appendix in the above case may be extended to December 17, 1950.

The reason this extension is requested is that the press of other business including the trial and the preparation

of other cases for trial in the United States District Court has prevented counsel for the Appellant from preparing its brief and appendix.

Krusen, Evans and Shaw, By Mark D. Alspach, Attorneys for Appellant.

Freedman, Landy and Lorry, By William M. Alper, Attorneys for Appellee.

Approved: Maris, C. J.

(Received & filed Nov. 17, 1951; Ida O. Creskoff, Clerk).

[fol. 31] [Stamp:] Received & filed January 2, 1951, Ida O. Creskoff, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON, *Appellee*,

vs.

ISBRANDTSEN COMPANY, INC., *Appellant*.

STIPULATION

It is hereby stipulated by and between proctors for the parties that the time within which appellee may file his brief in the above entitled matter shall be extended to and including February 4, 1951, subject to the approval of this Court.

Approved: Biggs Ch. J., Jan. 2, 1951.

Freedman, Landy and Lorry, By William M. Alper, Proctors for Appellee.

Krusen, Evans and Shaw, By Mark D. Alspach, Proctors for Appellant.

[fol. 32] [Endorsed:] In the United States Court of Appeals for the Third Circuit, No. 10,312, Matthew Johnson, Appellee, vs. Isbrandtsen Company, Inc., Appellant. Stipulation. Freedman, Land, & Lorry, 900 Jefferson Building, 1015 Chestnut Street, Philadelphia, Pa.

[fol. 33] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

Stipulation of Counsel to Include Additional Matters in the Record Under Civil Rule 75(h)

And Now, to wit, this 2nd day of February, 1951, it is stipulated and agreed by and between the attorneys for the above-named parties that the following testimony and exhibits, which were offered in evidence at the trial of the case in the United States District Court for the Eastern District of Pennsylvania, and which were omitted from the original record transmitted to this court by reason of the accident and mistake of counsel, be included as part of this record before this court:

[fol. 34] 1. Portion of Cross-Examination of Wells Brandon, Jr.; a Witness Called On Behalf of the Respondent

Wells Brandon, Jr., having been duly sworn was examined and testified as follows:

By Mr. Alper:

Q. Did you ever get your pay for that voyage?

Mr. Alspach: I object to that Your Honor. That is irrelevant to this issue.

The Court: Well, I think it is irrelevant. I don't know how it is relevant.

Mr. Alper: All right.

By Mr. Alper:

Q. Did you ever make a claim against the Isbrandtsen Company arising out of this voyage?

Mr. Alspach: I object to that also Your Honor.

The Court: I will take it subject to the objection.

By the Court:

Q. Did you make any claim against Isbrandtsen as a result of what occurred on this voyage?
A. I did.

[fol. 35] By Mr. Alper:

Q. What was the claim for?
A. If was for damages and my wages.
Q. After you filed your claim was that claim settled?
A. No, it wasn't.
Q. Were you ever paid your wages?
A. No, I wasn't.
Q. All right. You came up to Philadelphia voluntarily?
A. Yes.
Q. To testify in this case?
A. Yes.
Q. Were your expenses paid?
A. Just expenses, yes.
Q. Just your expenses?
A. And loss of time for being away.

2. A Portion of the Agreement Between National Maritime Union and Isbrandtsen Company, Inc., Including That Part of the Fly Award Relating to Transportation, Which Was Read Into the Record as an Exhibit

"Section 3. Traveling. (a) Members of the Union, when transported by the Company during the course [fol. 36] of their employment, shall be provided with first class transportation by rail and with subsistence at the rate of four dollars ($4.00) per day, in addition to their regular monthly wage. When traveling at night is involved, a berth must be provided.

(b) In the event that a vessel terminates a voyage in a port other than the original port of engagement, first class transportation, including berth where necessary, wages and subsistence at $4.00 a day back to the port of original engagement shall be furnished to each member of the Unlicensed Personnel. At the request of the individual crew members, each such member of the Unlicensed Personnel shall be paid in cash the

amount equivalent to first class railroad transportation plus twenty percent (20%) thereof. A cash settlement shall not include pullman berth or seat or tax.

The above will apply under the following conditions:

[fol. 37] 1. After completion of any foreign voyage, except nearby foreign voyages from Atlantic and Gulf Coast ports to points in the West Indies, Central America, and the northern coast of South America.

2. After completion of a coastwise, intercoastal or nearby foreign voyage as specified above, at the end of sixty (60) days' employment.

3. After termination of the crewmember's employment in a continental United States port, regardless of type of voyage or length of employment if:

a. The vessel was laid up, sold or transferred.

b. The vessel was shipwrecked or otherwise lost.

c. Employment was terminated for illness or injury requiring hospitalization.

(c.) Port of original engagement shall mean the port in the continental United States where the crew member is first engaged by the Company, regardless of type of articles signed.

(d.) No crew member shall be entitled to transportation if he continues employment on the vessel.

(Agreement, August 18, 1948)."

[fol. 38] It is further stipulated and agreed that counsel for the appellant do not waive any objection heretofore made to the foregoing at the trial of the case by reason of this stipulation.

Krusen, Evans and Shaw, by Mark D. Alspach, Attorneys for Appellant; Freedman, Landy and Lorry, by William M. Alper, Attorneys for Appellee.

Feb. 9, 1951. Approved. Kalodner, J.

(Received & Filed Feb. 9, 1951. Ida O. Creskoff, Clerk.)

[fol. 39] [Stamp:] Received & filed Feb. 5, 1951. Ida O. Creskoff, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

ORDER

And Now, to wit, this fifth day of February, 1951, upon consideration of the foregoing petition, it is

Ordered that the appellee is granted leave to submit a typewritten brief and appendix.

By the Court: Kalodner, J.

Received & filed Feb. 5, 1951. Ida O. Creskoff, Clerk.

[fol. 40] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, Appellant

Petition By Appellee For Leave To Typewrite The Briefs and Appendix On Appeal

To The Honorable, The Judges of the Said Court:

The petition of Matthew Johnson, an American merchant seaman, by his proctors, Messrs. Freedman, Landy and Lorry, respectfully represents:

1. That on October 27, 1948, the petitioner commenced an action in Admiralty for the recovery of wages earned while serving as a member of the crew of the S.S. "Stephen

W. Kearny", the respondent's vessel, and a claim under the provisions of R. S. 4529.

2. That your petitioner brought the said action under the provisions of the Maritime Law, and without prepayment of costs under the provisions of the Act of July 1, [fol. 41] 1918, C. 113, Sec. 1, 40 Stat. 683, 23 U.S.C. Sec. 837.

3. That on May 19, 1950, the court below, by the Honorable William H. Kirkpatrick, filed an opinion allowing the recovery of wages, and on June 21, 1950, filed a final decree entering judgment in favor of the libellant.

4. That on September 19, 1950, respondent's Notice of Appeal was filed.

5. That on January 2, 1951, this court approved a stipulation to extend the time for filing appellee's brief to and including February 4, 1951.

6. That your petitioner seeks leave to typewrite the appellee's brief and appendix in this court.

And your petitioner will ever pray, etc.

Freedman, Landy and Lorry, by William M. Alper, Attorneys for Petitioner.

We hereby consent to the allowance of the within petition.

Krusen, Evans and Shaw, by Robert Cox, Attorneys for Respondent-Appellant.

[fol. 42]. [Endorsed:] United States Court of Appeals for the Third Circuit. No. 10,312. Matthew Johnson v. Isbrandtsen Company, Inc., Appellant. Order and Petition by Appellee for Leave to Typewrite the Briefs and Appendix on Appeal. Freedman, Landy and Lorry, 1415 Walnut Street, Philadelphia 2, Pa.

[fol. 43] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, Appellant

Appeal from the United States District Court for the Eastern District of Pennsylvania

Argued February 19, 1951

Before Biggs, Chief Judge, and Goodrich and McLaughlin, Circuit Judges

OPINION OF THE COURT—Filed August 17, 1951

By BIGGS, Chief Judge.

The libellant, Johnson, employed as a messman on board the S.S. "Kearny", on April 21, 1948, while the vessel was in the Pacific, attacked without justification another member of the crew, Brandon, stabbing him so severely that it was necessary to divert the Kearny from its course to the Island of Tonga in order to hospitalize him. Various issues in the court below have been disposed of by stipulation and the sole question remaining for disposition is whether the respondent, Isbrandtsen, is entitled to set-off or recoup the losses incurred by it by reason of the diversion of the Kearny to Tonga and Brandon's hospitalization [fol. 44] against wages earned by Johnson up to the time of the stabbing. The court below held that there could be no set-off or recoupment and entered an order requiring Isbrandtsen to pay Johnson's wages and his expenses to the port of "signing on". See 91 F. Supp. 872. Isbrandtsen has appealed.

Reliance is placed by Johnson primarily on the provisions of R.S. Sections 4529, 4530 and 4596, 46 U.S.C.A. §§ 596, 597 and 701, though other statutes may be deemed

to be of some aid in determining the intent of Congress.[1] R.S. Section 4529 provides for prompt payment of the seaman upon his discharge and if the master or owner refuses to make the payment within the time prescribed "without sufficient cause" double wages shall be recoverable for each day of delay. R.S. Section 4596 sets up eight offenses which the seaman may commit and prescribes penalties for each of the eight. Johnson contends that it is only when a seaman has committed one of these offenses that justification is afforded the master or shipowner under R.S. Section 4529 to withhold payment of wages. Isbrandtsen takes the contrary position, asserting that under circumstances such as those at bar set-off or recoupment has been allowed. It relies on such decisions as The T. F. Whiton, Fed. Cas. No. 13,849; Macomber v. Thompson, Fed. Cas. No. 8,919; The W. F. Babcock, 2 Cir., 85 F. 978; The Ellen Little, D.C. Mass., 246 F. 151; Oldfield v. The Arthur P. Fairfield, 9 Cir., 176 F. 2d 429; Shilman v. United States, 2 Cir., 164 F. 2d 649; and Chambers v. Moore McCormack Lines, Inc., 3 Cir., 182 F. 2d 747.

We agree with the court below and not with the views expressed by Judge Fee in his able opinion in the Oldfield case. In that case the court found in effect that the right of recoupment had been revitalized by the Shilman decision in the Second Circuit. But Judge Augustus Hand, after a review of the statutory provisions section by section, in-
[fol. 45] cluding those referred to in this opinion, said, "The above sections look toward payment to the seaman by his employer, at the termination of the employment of all his earned wages without any deductions except those which are expressly authorized by statute." The statute to which Judge Hand referred was R. S. Section 4596. The Second Circuit decided the Shilman case on the basis that the crime which the seaman had committed and the fine which was imposed did not fall within the categories specified by R.S. Section 4596, but the Court also lacked proof that the ship had suffered loss thereby. The Court did not permit

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[1] See, for example, R.S. Section 4565, 46 U.S.C.A. § 600, and the Act of March 4, 1915, c. 153, Section 12, 38 Stat. 1169, 46 U.S.C.A. § 601.

a set-off by the shipowner and the Shilman decision seems hardly helpful.

In Eldridge v. Isbrandtsen Co., 89 F. Supp. 718, 720 (decided April 11, 1950), the court below stated, "We feel that the only deductions which may be made from a seaman's wages are those specifically authorized by the Act.", viz., R.S. Section 4596, 46 U.S.C.A. § 701. Contrast this statement, relied on by Johnson here, with that made by us in Chambers v. Moore McCormack Lines, *supra* (decided June 12, 1950), 182 F. 2d at p. 747. We said, "The answer to this argument, viz., that the only deductions which may be made from a seaman's wages are those specifically authorized by R.S. Section 4596, is that R.S. Section 4596 . . . does not list all of the causes sufficient to warrant the withholding of wages." In the Chambers case, however, we were dealing only with the question of penalties and we decided in substance that though a withholding of wages may be for "a sufficient cause", so that the shipowner is not liable for a penalty under R.S. Section 4529, nonetheless, the seaman may be entitled to recover his wages.[2] That decision is not of aid in determining the questions presented by the case at bar.

[fol. 46] We think it unnecessary to discuss here all of the causes sufficient to warrant the withholding of wages. It is clear that Sections 4529 and 4596 must be liberally construed in favor of seamen, wards of the admiralty. See Garrett v. Moore-McCormack Company, 317 U.S. 239, and Waterman Steamship Corporation v. Jones, 318 U.S. 724. A court will be loath to wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman.

Isbrandtsen contends that Johnson's conduct falls within

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[2] We cited the decision of Mr. Justice Stone in Collie v. Fergusson, 281 U.S. 52, 56, in which it was stated: "That the liability is not incurred where the refusal to pay is in some reasonable degree morally justified, or where the demand for wages cannot be satisfied either by the owner or his interest in the ship, has been the conclusion reached with practical unanimity by the lower federal courts."

the seventh paragraph of R.S. Section 4596[3] but we cannot construe the phrase "damaging the vessel" as the equivalent of doing injury to a member of the crew. We also have given consideration to the proposition that Johnson's conduct might fall within the fourth paragraph of R.S. Section 4596, which prescribes a penalty "For willful disobedience of any lawful command at sea". But we have concluded that paragraph four provides a penalty for disobedience to specific commands and is not intended to relate to the general discipline on shipboard.

We are brought to the conclusion that Johnson can recover. The sixth paragraph of R.S. Section 4596 prescribes punishment "For assaulting any master, mate, pilot, engineer, or staff officer by imprisonment for not more than two years." Congress provided a specific penalty for assault by a seaman on any of the persons designated in the sixth paragraph and that penalty does not include loss of wages. Had Johnson's assault been upon the person of the master of the Kearny nevertheless his wages could not have been withheld. Seamen are not included in the designated group but Congress has legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman. By reason of this fact we do not take the view that such an assault [fol. 47] must result in the loss of wages of the seaman assailant. To so hold would savor of judicial legislation.

Policy suggests the reason why Congress refrained from such legislation. Under the best of conditions many voyages result in tensed nerves and sharpened animosities. Assaults, though usually not of a dangerous character, occur occasionally on shipboard. To hold that because of an assault a master or shipowner may withhold a seaman's wages would emasculate the protective statutes upon which seamen are entitled to rely.

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[3] This paragraph states: "For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of [the seaman's] wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months."

Accordingly the judgment of the court below will be affirmed.

A true Copy. Teste:

_____, Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 48] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania

Present: Biggs, Chief Judge, and Goodrich and McLaughlin, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

Ida O. Creskoff, Clerk.

August 17, 1951.

(Received & Filed August 17, 1951. Ida O. Creskoff, Clerk.)

[fol. 49] [Stamp:] Received & Filed Aug. 31, 1951. Ida O. Creskoff, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR REHEARING

Krusen, Evans and Shaw, 3100 Lewis Tower Building, Philadelphia 2, Pa., Attorneys for Appellant.

[fol. 50] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR REHEARING

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit;

The Motion of Isbrandtsen Company, Inc., Appellant, by its attorneys, Krusen, Evans and Shaw, respectfully represents:

1. An Opinion in the within matter was filed by your Honorable Court on August 17, 1951.

2. Appellant is desirous of filing a Petition for Rehearing for consideration by your Honorable Court.

3. The attorneys handling the within matter have been unable to prepare and file said Petition for Rehearing by reason of extended absence from their office immediately [fol. 51] prior to and subsequent to the filing of the within Opinion, which absence has been occasioned primarily by the summer schedule, and to a substantially lesser extent, by illness.

Wherefore, Appellant, Isbrandtsen Company, Inc., prays that your Honorable Court may enter an Order extending the time within which it may prepare and file a Petition for Rehearing to and including September 19, 1951.

Krusen, Evans and Shaw, by Mark D. Alspach, Attorneys for Appellant, Isbrandtsen Company, Inc.

[fol. 52] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., Appellant

ORDER EXTENDING TIME FOR FILING PETITION FOR REHEARING

Before Biggs, Goodrich and McLaughlin, JJ.

And now, this 5th day of September, A. D. 1951, upon consideration of the foregoing Motion of the Appellant, Isbrandtsen Company, Inc., for an Order extending the time within which it may file a Petition for Rehearing,

It Is Ordered that the time within which the Appellant, Isbrandtsen Company, Inc., may prepare and file its Petition for Rehearing be and the same is hereby extended to and including September 19, 1951.

For the Court: Biggs, Chief Judge.

(Received & Filed Sept. 5, 1951, Ida O. Creskoff, Clerk.)

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

No. 10,312.

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC.,

Appellant.

Appeal From the Judgment of the United States District Court for the Eastern District of Pennsylvania.

PETITION FOR REHEARING.

MARK D. ALSPACH,
THOMAS E. BYRNE, JR.,
KRUSEN, EVANS AND SHAW,
Lewis Tower Building,
Philadelphia 2, Pa.,
Attorneys for Appellant.

International, 236 Chestnut St., Phila. 6, Pa.

TABLE OF CASES CITED.

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Glennon v. Lebanon Mfg. Co., 140 Pa. 594	2
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56 Corpus Juris Secundum (Master and Servant) Sec. 77, 79 (pp. 500, 502)	2
Restatement of Agency, Sec. 399 (g), (k); Sect. 456	2
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46 U. S. C. A. 597	4, 5

PETITION FOR REHEARING.

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit:

The Petition of Isbrandtsen Company, Inc., by its attorneys, Krusen, Evans and Shaw, respectfully requests this Honorable Court to grant a rehearing in the within matter for the reasons to be set out herein.

Upon careful consideration of the Opinion, it is apparent that we have not conveyed adequately, either in our Brief or upon oral argument, the basis for our contention that we are entitled to set off against the wages claimed, the amount of pecuniary loss sustained by reason of libellant's wrongful conduct. We are convinced that further clarification of our position is necessary for complete consideration of the merit of our contention, and is indispensable to a proper determination of the issues involved.

A subsidiary reason for our requesting a rehearing, which in some aspects merges with our initial reason, is that the opinion lays down a rule applicable to shipowners which not only runs counter to the great weight of decided maritime cases, but also ignores well settled principles of law pertaining to the incidents of the master-servant relationship in general. We would like an opportunity to demonstrate this fact.

To clarify our position, we would emphasize preliminarily that in the present controversy we are not appearing in the role of a prosecutor or an aggrieved victim, seeking punishment upon or any penalty from the libellant. All that is sought is an orderly adjudication of the *civil liabilities* of the libellant and the respondent, *inter se*, arising out of the contract of employment. Our sole contention is that when faced with the claim for wages, we are entitled to set off or recoup the amount of liability in damages to us incurred by libellant as the direct result of his

wrongful conduct, his breach of the contract of employment.

The law applicable to the master-servant relationship is controlling on this point, and undoubtedly we have not placed sufficient emphasis upon it heretofore. It is well settled that where a servant, by his wrongful conduct, causes pecuniary loss to his master, the servant is subject to *civil liability* to the master, and that the servant's civil liability may be successfully asserted by the master by way of set-off, counter-claim or recoupment, when the master is faced with an action for wages by the servant. *Restatement of Agency,* Sect. 399 (g), (k); Sect. 456; *Glennon v. Lebanon Mfg. Co.,* 140 Pa. 594; *Rosner v. Globe Valve Corporation,* 83 N. Y. S. (2nd) 496, affd. 87 N. Y. S. (2nd) 524; *Norris v. Cohen,* 27 N. W. (2nd) 277, 223 Minn. 471; *Greenleaf v. Huntingdon & B. T. M. R. & Coal Co.,* 3 F. R. D. 24; *Maratta v. Chas. H. Heer Dry Goods Co.,* 190 Mo. App. 420, 177 S. W. 718; 56 *Corpus Juris Secundum* (Master and Servant) Sect. 77, 79 (pp. 500, 502).

In this state of the law, we submit that the proper inquiry in the case at bar is not whether any decisions or statutes peculiar to the maritime field *grant* the right of set-off or recoupment to the shipowner; rather, the sole problem is to determine whether maritime law sets the shipowner apart, in this respect, from the class of which he is in law a member, and discriminates against him, as a shipowner, to the extent of denying to him the rights commonly enjoyed by his brethren.

The answer to this problem, insofar as the maritime case law is concerned, is clear. We have cited in our Brief numerous cases which not only fail to indicate any reason or authority for limiting the shipowner's right, but actually confirm its existence. We think it inappropriate to dwell upon these cases at any length in this Petition, but we would like to make one observation concerning the opinion in *Shilman v. United States,* 164 F. (2d) 649.

The Opinion in the case at bar (Slip Opinion, page 3) cites the following quotation from the *Shilman* case:

> "The above sections look toward payment to the seaman by his employer, at the termination of the employment of all his earned wages without any deductions except those which are expressly authorized by statute."

We submit that the validity of this expression is necessarily limited by the facts of the *Shilman* case, in which the shipowner did not and could not assert by way of set-off or recoupment any actual pecuniary loss sustained by it as a result of the claimant's conduct. There is nothing in the *Shilman* case to suggest that the quoted language would be applicable, were the facts otherwise, as in the case at bar. Indeed, we submit that in citing many of the authorities which we have cited, and distinguishing the case before it on its facts, the Court in the *Shilman* case gave at least tacit recognition to the validity of the cited cases.

Before dismissing the *Shilman* case, we would invite attention to the fact that the Respondent in the case at bar is not attempting to make any "deduction" from Libellant's wages. Rather, it is our contention that we are entitled to assert contemporaneously with Libellant's claim for wages, our claim for pecuniary damages sustained arising out of the same relationship which gave rise to Libellant's claim. Strictly speaking, this is no more a "deduction" from the Libellant's wages than is any of a number of types of set-offs, counter-claims, etc., which have frequently been allowed to civil litigants in a host of other familiar situations.

We respectfully submit that the provisions of R. S. § 4596, referred to in the Opinion (Slip Opinion, Page 4), are neither relevant nor controlling in the case at bar. We are fearful lest we have conveyed, either in our Brief or upon oral argument, the impression that we relied upon R. S. § 4596, or that this legislation has any decisive bear-

ing on the issues involved. We did not intend to do so. On the contrary, we contend that R. S. § 4596 is penal in nature, and as such is irrelevant to a determination of this case. In our Brief (Page 8) we attempted to demonstrate that R. S. § 4596 is penal in nature, and no additional purpose would be served by repeating that argument here. Nor, for that matter, does the Opinion reveal to us any disagreement with our contention as to the nature of R. S. § 4596; rather, it persists in treating the main problem in the case as one of discipline, rather than of who owes whom how much, in which latter category, we respectfully submit, it properly belongs.

In the last four lines on page 4 of the slip copy of this Court's Opinion, it is clearly implied, if not held, that unless an Act of Congress specifically provides a crime as applicable to seamen when on the high seas, there is no penalty and *a fortiori* no crime. Thus it follows logically that none of the Common Law crimes are applicable to seamen; in fact, this Court says "Congress has legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman".

Thus a seaman can commit no common law crime, certainly none against his employer. It follows, then, that if Matthew Johnson had committed a common law crime against his employer, no penalty would attach and the employer would be powerless to make himself whole.

Let us illustrate. By false pretenses, as for example, falsifying the ship's payroll records or the number of hours worked by him, Matthew Johnson made it appear upon the payroll records of the ship that $500.00 had been earned by him at the time the vessel stopped at an intermediate port. In fact he had earned but $200.00.

Pursuant to 46 U. S. C. A. 597, he was entitled to receive on demand one-half of "his wages earned". Johnson points to the false payroll record and demands $250.00 and, as he must, the Master delivers that amount to him.

Later and before the vessel completes its voyage, the false pretenses committed by Johnson are discovered. When the vessel reaches the end of its voyage the true amount of wages earned by Johnson is $500.00. The shipowner deducts the $250.00 paid at the intermediate port and pays Johnson $250.00. Johnson claims that only $100.00 was properly advanced to him at the intermediate port and points to the provisions of 46 U. S. C. A. 597. He therefore demands the additional $150.00 and when it is not paid he commences suit for it. If this Court's Opinion in the present case is correct, then Johnson would be entitled to recover that $150.00 additional because there is no statutory authorization for deducting more than one-half of "Wages Earned" at the intermediate port. If this Court's Opinion is correct Johnson has committed no crime, no "penalty" can attach to him and his employer is powerless to protect himself from the effects of Johnson's act which would have been a crime at common law.

We respectfully suggest that in its Opinion this Court strays from logic when it regards the present case as one involving a penalty. It is not a penalty but a case of equitable recoupment or set-off in which an employer invokes the ancient right to claim against his employee for a loss caused the employer by the act of the employee. Yet this Court says that to compel a man to pay what he owes and invoke this equitable right of recoupment is to inflict a "penalty".

This is not a case where anyone is attempting to "wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman" (Slip Opinion, page 4, first paragraph). We suggest that it is not inflicting a penalty to seek to recover that which is owed. By its decision this Court has wiped out the rule of equitable recoupment or set-off as between seaman and employer and gives as its reason the fact that Congress has failed to legislate on the subject. Civil rights are not normally governed by penal statutes and we cannot think that Congress intended to repeal a well understood rule of

civil liability when it enacted a statute dealing with "offenses and penalties". That would attribute to Congress the intention that a "protective statute" was intended to become an offensive weapon in the hands of a seaman whose criminal conduct had caused loss to his employer.

In closing, we would like to dwell for a moment upon the considerations of policy underlying the present decision. We submit that this Honorable Court need have no fear of wiping away the benefits conferred by the statutes on seamen so long as the "penalty" statute (R.S. § 4529, 46 U. S. C. A. § 596) protects them, as a class, from arbitrary or capricious withholding of wages. Confining ourselves to the considerations of policy presented by the facts of the case at bar, we seriously doubt that Congress could ever have intended to protect or condone the conduct of one such as the Libellant when it enacted the "protective statutes" referred to in the Opinion (Slip Opinion, Page 5). Nor, we submit, can the classification of seamen as wards of the admiralty realistically be considered the touchstone to produce, or assist in producing, the result here attained. We seriously doubt that Mr. Justice Story, when he so classified seamen more than a century ago, could have been prompted by considerations of solicitude for one in Libellant's category.

CONCLUSION.

For the reasons set out in the foregoing Petition, we respectfully request this Honorable Court to grant a rehearing to the Respondent-Appellant in the within matter.

Respectfully submitted,

MARK D. ALSPACH,
THOMAS E. BYRNE, JR.,
KRUSEN, EVANS AND SHAW,
Attorneys for Respondent-Appellant, Isbrandtsen Company, Inc.

I hereby certify that the within Petition is filed in good faith and not for the purpose of delay but is, in my opinion, well founded in law and fact and proper to be filed herein.

MARK D. ALSPACH.

[fol. 54] [Stamp:] Received and filed September 27, 1951, Ida O. Creskoff, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,312

MATTHEW JOHNSON

v.

ISBRANDTSEN COMPANY, INC., APPELLANT

Sur Petition for Rehearing

Present: Biggs, Chief Judge, and Goodrich and McLaughlin, Circuit Judges

And now, to wit September 27, 1951 after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, September 27, 1951.

Biggs, Chief Judge.

Endorsements: Order Denying Petition for Rehearing.

[fol. 55] UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable, the Judges of the United States District Court for the Eastern District of Pennsylvania.

GREETING:

Whereas, lately in the United States District Court for the Eastern District of Pennsylvania, before you or some of you, in a cause between Matthew Johnson, Libellant (Appellee) and Isbrandtsen Company, Inc., Respondent, (Appellant)—No. 367 of 1948 In Admiralty—a Decree was entered in the District Court on June 21, 1950, which Decree is of record in the office of the clerk of the said District Court, to which reference is hereby made, and the same

is hereby expressly made a part hereof, as by the inspection of the record of the said District Court, which was brought into the United States Court of Appeals for the Third Circuit by virtue of an appeal by Isbrandtsen Company, Inc., agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

And whereas, the said cause came on to be heard before the said United States Court of Appeals for the Third Circuit, on the said record, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs, and that the Appellee, Matthew Johnson recover against the Appellant, Isbrandtsen Company, Incorporated in the sum of Twenty and 00/100 Dollars ($20.00) [fol. 56] for costs herein expended and have execution therefor.

August 17, 1951.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Signed and sealed this 3rd day of October in the year of our Lord one thousand nine hundred and fifty-one.

Ida O. Creskoff, Clerk, United States Court of Appeals for the Third Circuit.

Costs—Proctor's Fee, $20.00; total, $20.00.

[Endorsed:] No. 367 of 1948 In Admiralty, No. 10,312, Matthew Johnson vs. Isbrandtsen Company, Inc., Appellant. Copy, Mandate Received and Filed October 3, 1951, Ida O. Creskoff, Clerk.

[fol. 57] I, Ida O. Creskoff, Clerk of the United States Courts of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appellant's Appendix, Appellee's Supplemental Appendix, and proceedings in this court in the case of Matthew Johnson vs. Isbrandtsen Company, Inc., Appellant, No. 10,312,

on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 7th day of December in the year of our Lord one thousand nine hundred and fifty-one, and of the Independence of the United States the one hundred and seventy-sixth.

Ida O. Creskoff, Clerk of the U. S. Court of Appeals, Third Circuit. (Seal.)

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 493

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed March 3, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 493

ISBRANDTSEN COMPANY, INC.,
Petitioner,

vs.

MATTHEW JOHNSON,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

THOMAS E. BYRNE, JR.,
MARK D. ALSPACH,
KRUSEN, EVANS AND SHAW,
225 South 15th Street,
Philadelphia 2, Pa.,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 493

ISBRANDTSEN COMPANY, INC.,

Petitioner,

vs.

MATTHEW JOHNSON,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Isbrandtsen Company, Inc. respectfully prays that a writ of certiorari may issue out of this Court directed to the United States Court of Appeals for the Third Circuit to review the final judgment of that Court in an appeal docketed in said Court as No. 10,312, which affirmed a judgment in favor of the Respondent entered by the United States District Court for the Eastern District of Pennsylvania.

Summary and Statement of Matter Involved

This is a libel in admiralty by Respondent, a merchant seaman, to recover wages, the value of transportation from Philadelphia, Pennsylvania to Seattle, Washington and "double wages" under R. S. Sec. 4529, 46 U. S. C. A. Sec. 596.

Respondent joined the crew of Petitioner's steamship "Stephen W. Kearny" as a messman on February 3, 1948 at Seattle, Washington. On April 21, 1948 while the vessel was in the South Pacific en route to the United States, an altercation took place between Respondent and one Wells Brandon, another crew member, during which Respondent without justification attacked Brandon with a knife and wounded him so severely that it was necessary to divert the vessel from its course in order to get Brandon to a hospital (R. 15a).

As a result of Respondent's attack upon Brandon and the diversion of the vessel, Petitioner incurred expenses and losses amounting to $1,691.55 (R. 15a), representing the cost of hospitalization, medical care, repatriation and subsistence for Brandon, and the vessel's operating expenses attributable to diversion of the "Stephen W. Kearny" to the Island of Tonga.

After his assault upon Brandon, Respondent was confined aboard the vessel, and performed no duties. No wages were credited to Respondent after the date of the assault, and as the issues ultimately developed upon trial, Respondent made no claim for wages subsequent to April 21, 1948 (R. 13a).

When the voyage terminated at Philadelphia, Pennsylvania on May 31, 1948, Respondent was removed from the vessel by federal police authorities. He was not present at the pay-off of the crew on June 3, 1948. On June 11, 1948 Respondent's attorney made a demand upon Petitioner by

telephone for the payment of Respondent's wages, which demand was refused. Petitioner refused to pay Respondent because it set off the wages which had accrued to Respondent prior to the stabbing incident against the expenses incurred by Petitioner as a result of Respondent's assault upon Brandon (R. 13a).

Respondent then filed the present libel in admiralty. As originally drawn, the libel claimed wages in the amount of $750.27 and in a second cause of action claimed the value of transportation from Philadelphia, Pennsylvania to Seattle, Washington and "double wages" for withholding the wages and value of transportation which Respondent alleged were due him. Certain other issues not here material were raised by the original pleadings, but were subsequently removed from the case by stipulation (R. 12a). Likewise, by stipulation, the net amount of wages claimed by Respondent was asserted to be $439.27, and Petitioner admitted that as of April 21, 1948, the date of the stabbing incident, there had accrued to Respondent net earnings in that amount, which Petitioner refused to pay. Petitioner denied that Respondent was entitled to receive the sum of $439.27, or any part thereof (R. 12a).

Petitioner, in its answer to the libel, set up as a separate, complete and affirmative defense, and by way of counterclaim, that Respondent had attacked Brandon, wounded him and necessitated diversion of the vessel, and that by reason of the assault, Petitioner had incurred certain expenses. Petitioner further averred that the wages which would otherwise have been due Respondent had been lawfully retained by Petitioner on account of its loss, and claimed the balance of its loss from Respondent (R. 9a-10a).

The case proceeded to trial in the District Court before Chief Judge Kirkpatrick, who rendered his opinion on May 19, 1950. The Trial Judge found that the "facts upon which

[Petitioner's] affirmative defense and counterclaim are based are fully established by the evidence" (R. 15a). However, he awarded Respondent wages in the amount of $439.27, plus the value of transportation, but denied Respondent's claim for "double wages." On June 21, 1950, a final decree was entered in conformity with Judge Kirkpatrick's opinion (R. 18a), from which Petitioner took an appeal to the United States Court of Appeals for the Third Circuit.

On August 17, 1951, the Court of Appeals, in an opinion by Chief Judge Biggs, affirmed the judgment of the District Court (R. 32-36).

The Court of Appeals held that Petitioner could not recoup or set off its loss contemporaneously with Respondent's claim because Congress, in R. S. Sec. 4596, 46 U. S. C. A. Sec. 701, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman" (R. 35). In further support of its conclusion, the Court of Appeals adverted to the status of seamen as "wards of the admiralty," and expressed reluctance to "wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman" (R. 34).

Petitioner filed with the Court of Appeals a petition for rehearing (R. 38-47), which was denied on September 27, 1951 (R. 48). The present application for a writ of certiorari followed.

Jurisdiction

Petitioner's petition for rehearing in the United States Court of Appeals for the Third Circuit was denied on September 27, 1951. The jurisdiction of this Court to entertain this petition and to grant the same is provided in Sec. 1254 (1) and Sec. 2101 (c) of Title 28, United States Code.

Questions Presented

1. Is not R. S. Sec. 4596, 46 U. S. C. A. 701 a penal statute, and did not the Court of Appeals err in construing it to govern the civil rights and liabilities of seaman and shipowner, *inter se*, in a dispute involving solely the amount of money owing by one to the other at the conclusion of the voyage?

2. Under the general maritime law, cannot a shipowner, in an action for wages and other financial emoluments by a seaman, set off or recoup the amount of pecuniary loss sustained by the shipowner as the result of a deliberate act of the seaman in violation of the contract of employment?

3. Did not the Court of Appeals err in invoking the doctrine that "seamen are wards of the admiralty" to support its denial of the equitable right of set-off or recoupment to a shipowner against whom a monetary claim had been asserted by a seaman who had attacked with a deadly weapon and seriously wounded a shipmate?

Reasons Relied upon for Allowance of the Writ

1. The decision of the Court of Appeals for the Third Circuit is in direct conflict with the decision of the Court of Appeals for the Ninth Circuit in *Oldfield* v. *The Arthur P. Fairfield*, 176 F. (2d) 429, certiorari denied 338 U. S. 879.

In the *Oldfield* case, the Court of Appeals for the Ninth Circuit permitted a shipowner to set off against wages claimed, the libellant's pro rata share of a fine paid by the shipowner for release of the vessel, which had been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated. The libellant had not been tried for the offense of smuggling and *a fortiori* had not been convicted. Although R. S. Sec. 4596

provides no "penalty" or "punishment" for the seaman under these circumstances, the Court of Appeals held that this fact cannot be construed as an abolition of the equitable right of recoupment on the part of the shipowner.

The Court of Appeals in the case at bar squarely rejected the authority of the *Oldfield* case (R. 33). Thus there are presently existing two diametrically opposite views as to whether the shipowner's right to set-off or recoupment is limited to those instances in which the seaman has exhibited a type of conduct specifically proscribed by R. S. Sec. 4596.

2. The decision of the Court of Appeals for the Third Circuit is in conflict with the reasoning and basis of decision of the Court of Appeals for the Second Circuit in *Shilman* v. *United States,* 164 F. (2d) 649, certiorari denied 333 U. S. 837.

In the *Shilman* case, the United States in its capacity as shipowner, in a seaman's action for wages, attempted to set off the amount of a fine imposed upon the seaman-libellant by an United States Army court martial in a foreign country. In its opinion (164 F. (2d) 652), the Court of Appeals cited several cases under the general maritime law wherein set-offs had been allowed arising out of expenses incurred on behalf of the ship in connection with the voyage, which were attributable to the seaman's conduct. The Court then proceeded to distinguish the case before it on the ground that in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the libellant's conduct. The clear implication of the *Shilman* opinion, insofar as it pertains to the present problem, is that the Court of Appeals for the Second Circuit construed the cited cases under the general

maritime law as authoritative and applicable upon their facts.

3. The decision of the Court of Appeals for the Third Circuit is in conflict with the earlier decision of the Court of Appeals for the Second Circuit in *The W. F. Babcock*, 85 Fed. 978. In that case, certain seamen left the vessel without cause, were arrested and taken before a consul, and at the request of the master were delivered to the custody of the Hawaiian police authorities. The shipowner was permitted to set off against their claimed wages, the charges of their arrest and detention, the wages of their substitutes, and the amount which was necessarily paid by the vessel to the shore authorities as a penalty for the wilful breakage of a shop window by the seamen on their way to the vessel under custody.

4. The decision of the Court of Appeals for the Third Circuit is in conflict with the following cases decided by various lower federal courts over a period of almost a century:

The T. F. Whiton, Fed. Cas. No. 13,849 (D. C., S. D. N. Y., 1879).

Brown v. *The Neptune*, Fed. Cas. No. 2,022 (D. C., E. D. Pa., 1829).

The Ellen Little, 246 Fed. 151 (D. C. Mass., 1916).

Macomber v. *Thompson*, Fed. Cas. No. 8,919 (Circuit Court, Dist. Mass., 1833).

The Marjory Brown, 134 Fed. 999 (D. C., S. D. N. Y., 1905).

Scott v. *Russell*, Fed. Cas. No. 12,546 (D. C., S. D. N. Y., 1848).

Snell v. *The Independence*, Fed. Cas. No. 13,139 (D. C., E. D. Pa., 1830).

5. The Court of Appeals for the Third Circuit has construed a statute, R. S. Sec. 4596, which has heretofore

never been construed by this Court with respect to its relevance to civil disputes between shipowner and seaman as to the amount owing the seaman at the termination of a voyage. R. S. Sec. 4596 is a penal statute, the object of which is to lay down a code of discipline and establish punishment for its violation. As such, the statute is irrelevant to any determination of the civil rights of shipowner and seaman, *inter se*. Ignoring this basic distinction, the Court of Appeals for the Third Circuit has decided, in effect, that where a seaman is not punishable under the statute, his employer cannot assert civil liability on the part of the seaman to the employer. The Court of Appeals persisted in treating the present controversy over civil rights and liabilities as a problem of crime and punishment, which it is not. Not only is this interpretation fundamentally fallacious; it can lead, and in this case has lead to a grossly inequitable and absurd result.

In construing R. S. Sec. 4596 as it did, the Court of Appeals for the Third Circuit has disregarded the precept of this Court in *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 437, that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required. When R. S. Sec. 4596 was enacted, the shipowner's equitable right of set-off or recoupment was already firmly established in the general maritime law, the common law of the sea. Nothing in the statute, in the circumstances surrounding its enactment, or in the particular factual situation presented by the case at bar indicates or even suggests that the statute in any way affected the right presently asserted by Petitioner.

Wherefore, Isbrandtsen Company, Inc. prays that this Honorable Court may grant this petition for certiorari.

Respectfully submitted,

Isbrandtsen Company, Inc.,
By Thomas E. Byrne, Jr.,
Counsel for Petitioner.

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

Thomas E. Byrne, Jr.,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. Under the General Maritime Law, Petitioner Had the Right to Recoup or Set Off the Pecuniary Loss Sustained by It as the Result of Respondent's Acts, Against the Financial Emoluments Which Would Otherwise Have Been Payable to Respondent.

It is Petitioner's contention that it had the right to recoup or set off the pecuniary loss which it sustained by reason of Respondent's unjustified knife attack upon a fellow crew member, against the wages and value of transportation which would otherwise have been payable to Respondent.

The right which Petitioner asserts is firmly rooted in the general maritime law, and its scope is clearly delineated by decisions involving a variety of factual situations. Reference to the decided cases reveals that the shipowner's right to mitigate its loss is founded upon equitable principles to which admiralty courts have customarily resorted in adjudicating controversies presented to them.

In *The T. F. Whiton*, Fed. Cas. No. 13,849 (D. C., S. D. N. Y., 1879), the second mate of a vessel filed a libel to recover the sum of $91.75 as wages allegedly due him. The vessel owner, by way of defense, averred that the libellant, during the course of the voyage, had committed an assault and battery upon the vessel's steward, with the result that the steward was severely injured and was in danger of losing his life. The vessel incurred a loss of $120.00 in sums paid for medical attention for the steward, and in the loss of the steward's services. The court held

that under these circumstances, there was nothing due and owing the libellant. The court said:

> "That such an act on the part of a seaman, whereby the vessel suffers damage or is put to expense, is to be considered in diminution of a claim for wages, has been often held. (citing cases)"

The striking similarity between the facts of *The T. F. Whiton* and those of the case at bar is immediately apparent. Another case, *Macomber* v. *Thompson,* Fed. Cas. No. 8,919 (Circuit Court, Dist. Mass., 1833), stands for substantially the same proposition as does *The T. F. Whiton.* In *Macomber* v. *Thompson,* Judge Story was considering a factual situation in which a crew member had been insubordinate, had assaulted the second mate and the chief mate and had generally conducted himself in an insolent and mutinous manner. Judge Story said:

> "The charge thus set up in its actual presentation is certainly of a very high and aggravated nature. If it were completely borne out in its full extent by the evidence, it would call for the severe animadversion of the court. Some parts of the charge are, however, wholly unsupported, not only in form, but in substance."

The court then went on to point out that the shipowner had completely failed to establish that the losses which it attempted to set off against the wages claimed were directly attributable to the libellant's conduct, and therefore permitted only a partial set-off of the wages claimed. In the case at bar, there can be no question but that the amount of loss sustained by the Petitioner was the direct and proximate result of the Respondent's act in violation of the contract of employment.

There are many other analogous cases under the general maritime law where, in an action for wages by a seaman,

the admiralty courts have permitted the vessel owner to set off losses which it had sustained by reason of the libellant's dereliction of duty. In *The W. E. Babcock*, 85 Fed. 978 (C. A. 2, 1898), certain seamen left the vessel without cause, were arrested and taken before a Consul, and at the request of the master were delivered to the custody of Hawaiian police authorities. The shipowner was permitted to set off against their claimed wages the charges for their arrest and detention, the wages of their substitutes, and the amount which was necessarily paid by the vessel to the shore authorities as a penalty for the willful breakage of a shop window by the seamen on their way to the vessel under custody.

The Ellen Little, 246 Fed. 151 (D. C. Mass., 1916), was a case in which the libellant, an officer of the vessel, and other crew members took no measures to prevent the smuggling ashore of a stowaway, although libellant knew that the stowaway was aboard the vessel. Federal authorities detained the vessel for a few days, and other expenses were incurred by the ship as a result of the smuggling incident. The court deducted from the libellant's pay a proportion of the loss occasioned the shipowner commensurate with the libellant's fault as compared with that of other crew members, some of whom appeared to have been equally culpable.

In *Brown* v. *The Neptune*, Fed. Cas. No. 2,022 (D. C., E. D. Pa., 1829), the vessel owner was permitted to deduct from wages claimed, with respect to one libellant, the loss actually sustained by the vessel by reason of the libellant's wrongful absence from the ship, and with respect to another libellant, the vessel owner was permitted to deduct the value of an article belonging to the vessel which had been lost by his inattention and carelessness. In *Spell* v. *The Independence*, Fed. Cas. No. 13,139 (D. C., E. D. Pa., 1830),

the shipowner was allowed to deduct a proportionate share of demurrage expenses occasioned by the libellant's refusal to perform duty, and also police costs and charges incurred as a result of the seaman's improper conduct while ashore. See also *Scott* v. *Russell*, Fed. Cas. No. 12,546 (D. C., S. D. N. Y., 1848); and *The Marjory Brown*, 134 Fed. 999 (D. C., S. D. N. Y., 1905).

Two recent appellate decisions deal with the shipowner's right to set-off or recoupment under the General Maritime Law: *Oldfield* v. *The Arthur P. Fairfield*, 176 F. (2d) 429, cert. den. 338 U. S. 879 (C. A. 9, 1949) and *Shilman* v. *United States*, 164 F. (2d) 649, cert. den. 333 U. S. 837 (C. A. 2, 1947). Rather than discuss the *Oldfield* and *Shilman* decisions piecemeal, we shall treat them under the next point in our argument, under which they would appear to have the most significant bearing upon the problem presented by this petition.

The foregoing cases stand, in general, for the proposition that a shipowner may set off against amounts otherwise owing to the seaman, the pecuniary loss sustained by the vessel as a direct result of the seaman's act in violation of the contract of employment. In particular, they hold that where a seaman has committed an assault upon another crew member, the set-off is allowable as to such losses as are proven to be the direct result of the assault: The *T. F. Whiton, supra*, and *Macomber* v. *Thompson, supra*. Under these authorities, and under the facts of the case at bar as found by the Trial Judge, it is clear that Petitioner had a right to recoup or set off its pecuniary loss when sued by the Respondent.

The rule laid down in the foregoing cases is by no means peculiar to the maritime law. Rather, these cases illustrate that the maritime law, on this point, is no different from the law pertaining to the master-servant relationship in

general. It is well settled that where a servant, by an act in violation of the contract of employment, causes pecuniary loss to his master, the servant is subject to *civil liability* to the master, and that the servant's civil liability may be successfully asserted by the master by way of set-off, counterclaim or recoupment, when the master is faced with an action for wages by the servant. *Restatement of Agency*, Sec. 399 (g), (k); Sec. 456; *Glennon* v. *Lebanon Mfg. Co.*, 140 Pa. 594; *Rosner* v. *Glove Valve Corporation*, 83 N. Y. S. (2nd) 496, affd. 87 N. Y. S. (2nd) 524; *Norris* v. *Cohen*, 27 N. W. (2nd) 277, 223 Minn. 471; *Greenleaf* v. *Huntingdon & B. T. M. R. & Coal Co.*, 3 F. R. D. 24; *Maratta* v. *Chas. H. Heer Dry Goods Co.*, 190 Mo. App. 420, 177 S. W. 718; 56 *Corpus Juris Secundum* (Master and Servant) Sec. 77, 79 (pp. 500, 502).

II. The Court of Appeals Erred in Concluding That Petitioner Could Not Recoup or Set Off Its Loss Because Respondent's Conduct Did Not Fall Within Any of the Categories Enumerated in R. S. Sec. 4596.

The cases under the general maritime law which we have previously discussed, and which established the rule for which Petitioner here contends, were rejected by the Court of Appeals. In the view taken by the Court of Appeals, the case turned upon the provisions of R. S. Sec. 4596, 46 U. S. C. A. Sec. 701. The Court held that since Congress, in this statute, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman upon seaman," it did not take the view "that such an assault must result in the loss of wages of the seaman assailant."

It is Petitioner's contention that the provisions of R. S. Sec. 4596 are neither relevant nor controlling in the case

at bar. R. S. Sec. 4596 is a penal statute, but the question in the case at bar has nothing to do with crime and punishment. All that Petitioner asserts is the existence of a financial obligation to it on the part of Respondent, arising out of the employer-employee relationship, and the right to recoup or set off this obligation in the Respondent's suit which is founded upon the same relationship. In so doing, Petitioner is not attempting to punish or penalize Respondent; its object is not to impose discipline, but rather to secure recompense by an orderly adjudication of its civil rights and liabilities.

That R. S. Sec. 4596 is penal in nature is readily apparent on its face. This statute lists eight categories of "offenses" which a seaman can commit, and prescribes the punishment for each. The language of R. S. Sec. 4610, 46 U. S. C. A. Sec. 711, which provides, inter alia, for the recovery of "penalties and forfeitures" imposed by R. S. Sec. 4596 is likewise significant. The reference to "conviction," "imprisonment," "penalty" and words of similar import in R. S. Sec. 4610 clearly reflects the nature of R. S. Sec. 4596 and the objects sought to be attained thereunder.

A brief reference to the derivation of R. S. Sec. 4596 is likewise enlightening. This section was derived from Sec. 51 of the Act of June 7, 1872, c. 322, 17 Stat. 273. Sec. 51 of the Act of 1872 immediately follows the general caption "Discipline of Seaman," and contains provisions which are similar in many respects to those now embodied in R. S. Sec. 4596.

The opinion of the Court of Appeals does not reveal to Petitioner any disagreement on the part of the Court with Petitioner's contention as to the nature of R. S. Sec. 4596. The point of departure is the analysis of the issues involved. The Court of Appeals persists in treating the problem in the case at bar as one of "discipline" or

"penalty," rather than of who owes whom how much, in which latter category it properly belongs.

The proposition of the Court of Appeals that R. S. Sec. 4596 codifies the only circumstances under which a seaman may be subject to civil liability to his employer was recently flatly rejected by the Court of Appeals for the Ninth Circuit in *Oldfield* v. *The Arthur P. Fairfield*, 176 F. (2d) 429, certiorari denied 338 U. S. 879. In the *Oldfield* case, the Court of Appeals permitted a shipowner to set off against wages claimed, the libellant's pro rata share of a fine paid by the shipowner for release of the vessel, which had been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated. The libellant had not been tried for the offense of smuggling and *a fortiori* had not been convicted. Although R. S. Sec. 4596 provides no "penalty" or "punishment" for the seaman under these circumstances, the Court of Appeals held that this fact cannot be construed as an abolition of the equitable right of recoupment belonging to the shipowner.

The Court of Appeals for the Second Circuit in *Shilman* v. *United States*, 164 F. (2d) 649, certiorari denied 333 U. S. 837, likewise rejected by implication the contention that the shipowner is without a civil remedy where the seaman's conduct in violation of the contract of employment has caused pecuniary loss to the vessel's interests. The *Shilman* case involved an attempt by the United States, in its capacity as shipowner, to set off against wages claimed by a seaman, the amount of a fine imposed upon the seaman by a United States Army court martial in a foreign country. The Court of Appeals (at 164 F. (2d) 651) first referred to various statutory provisions which authorized deductions from wages. It then cited several

cases (including *The T. F. Whiton*, *supra*, at 164 F. (2d) 652) under the general maritime law wherein set-offs had been allowed with respect to expenses incurred on behalf of the ship in connection with the voyage. The Court then proceeded to distinguish the case before it from those arising under the general maritime law on the ground that, in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the seaman's conduct. The clear implication of the *Shilman* opinion is that the Court of Appeals for the Second Circuit considered the cited cases under the general maritime law as authoritative and applicable upon their facts.

The Court of Appeals for the Ninth Circuit, in the *Oldfield* case, recognized this implication of the *Shilman* opinion. In reaching its conclusion, the Court in the *Oldfield* case noted (at 176 F. (2d) 431) that the "right of recoupment has . . . recently been recognized again" in the *Shilman* case, and quoted extensively from that portion of the *Shilman* opinion which cited cases under the general maritime law supporting the right of the shipowner to set off losses incurred by the ship in connection with the voyage, as the result of the seaman's conduct.

The view taken by the Court in the *Oldfield* case as to the efficacy of the general maritime law, the statute notwithstanding, in controversies involving civil liabilities finds a striking parallel in the construction given over a century ago by admiralty courts to the Act of July 20, 1790, c. 29, 1 Stat. 131 *et seq.* This Act contained, inter alia, the forerunner of the sections of R. S. Sec. 4596 dealing with the offenses of absence from duty and desertion on the part of seamen.

Judge Story, in *Cloutman* v. *Tunison*, Fed. Cas. No. 2,907 (C. C., D. Mass., 1833) held unequivocally that the Act of 1790 merely created certain statutory offenses, and did not in any way impair the maritime law. "It does not supersede the general doctrine of the maritime law or repeal it; but merely in a given case applies a particular rule *in poenam*, leaving the maritime law in all other cases in full efficiency" (at 5 Fed. Cas. p. 1094).

This principle was reaffirmed by Judge Story in *Coffin* v. *Jenkins*, Fed. Cas. No. 2,948 (C. C., D. Mass., 1844), wherein Judge Story referred to the desertion proscribed by the Act of 1790 as "an auxiliary statute desertion, distinguished from and independent of that of the maritime law . . ." (at 5 Fed. Cas. p. 1190). In 1883, Judge Addison Brown in *Welcome* v. *The Yosemite*, 18 Fed. 383, referred to the principle enunciated by Judge Story as "the settled construction" of the Act of 1790, reiterating that the provisions of the Act of 1790 "were designed to supplement the maritime law, and not to repeal or to supersede it" (at 18 Fed. 384). To the same effect, see *The John Martin*, Fed. Cas. No. 7,357 (D. C., E. D. Mich., 1870) and *The Osceola*, Fed. Cas. No. 10,602 (D. C., S. D. N. Y., 1846).

The provisions of R. S. Sec. 4529, 46 U. S. C. A., Sec. 596, referred to by the Court of Appeals in the case at bar are likewise irrelevant to the question presented. This statute provides for the recovery of "double wages" by the seaman in instances where his wages have been withheld "without sufficient cause" beyond certain stated periods after the termination of his engagement. This statute deals solely with the *time* for payment. It does not undertake to liquidate the amount, if any, owing to the seaman at the termination of the voyage, nor does it even suggest a limitation upon the defenses, set-offs, or other claims which may be asserted by the shipowner in a suit by the seaman

for wages after the termination of the voyage: It is worth noting, in passing, that this statute is in itself an effective deterrent to arbitrary or capricious refusal to pay a seaman's wages. The denial to the shipowner of the right of recoupment or set-off here asserted by Petitioner is clearly unnecessary to achieve that purpose.

In construing R. S. Sec. 4596 to deny to Petitioner the right of set-off or recoupment, the Court of Appeals has disregarded the precept of this Court in *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 437, that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required. When R. S. Sec. 4596 was enacted, the shipowner's right of set-off or recoupment, as the previously cited cases demonstrate, was already firmly established in the general maritime law, the common law of the sea. Nothing in the statute, in the circumstances surrounding its enactment, or in the particular factual situation presented by the case at bar, indicates or even suggests that the statute in any way affected the right presently asserted by Petitioner. The statute merely provides penal sanction for certain offenses, whereas the general maritime law establishes the civil rights and liabilities of the seaman and shipowner, *inter se*. Thus there is no conflict between the general maritime law and the statutory law; on the contrary, they are wholly compatible, when one considers the difference in the underlying purpose between these two different sources of law. Viewed in this light, their co-existence is natural, and detracts nothing from their mutual vitality.

III. The Court of Appeals Erred in Invoking the Doctrine That "Seamen Are Wards of the Admiralty" to Support Its Denial of the Equitable Right of Set-Off or Recoupment to the Petitioner.

Certain considerations of policy appear to have influenced the Court of Appeals' determination of the case at bar. The major premise of the Court's dissertation on the policy underlying its decision seems to be the fact that seamen are "wards of the admiralty."

That this doctrine pervades the maritime law has been demonstrated in a multitude of cases too numerous to mention. The doctrine had its origin in a bygone era when service in the merchant marine was something akin to serfdom. Its object was to mitigate by judicial solicitude the intolerable conditions which surrounded maritime employment in the early days of American merchant shipping.

Petitioner deems it unnecessary to discuss in this Brief the abstract question of whether, in this day of enlightenment, there still exists any justification for the application of the "wardship" doctrine in the maritime law. It may be assumed, for present purposes, that in a controversy where the equities are evenly or fairly evenly divided between seaman and shipowner, the doctrine may be determinative of the result.

However, Petitioner earnestly submits that the doctrine can have no application whatever to the situation presented by the case at bar. Here the doctrine, with its implications of liberality, was invoked to exculpate from civil liability a seaman who had attacked and seriously wounded a shipmate with a deadly weapon. What is more, this exculpation saddled a perfectly innocent shipowner with a financial loss approximately three times as great as the amount awarded the seaman.

We cannot think that any conscientious guardian would countenance, much less encourage this type of conduct by insulating his ward from the consequences of his acts, especially to the detriment of an innocent bystander. Since the wardship doctrine has become, for practical purposes, a substantive part of the maritime law, it is important to seaman and shipowner alike that this Court delimit the field of its operation to situations where its impact is not offensive to fundamental notions of justice. Petitioner therefore respectfully urges this Court to examine and correct the indiscriminate application of the wardship doctrine which assisted in producing the result in the case at bar.

Conclusion

The Petitioner's prayer for a writ of certiorari should, therefore, be granted.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Brief and Appendix for Petitioner.

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IN THE

Supreme Court of the United States.

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF PETITIONER, ISBRANDTSEN COMPANY, INC., ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

OPINIONS BELOW.

The opinion of Chief Judge Kirkpatrick of the United States District Court for the Eastern District of Pennsylvania, filed May 19, 1950, appears at R. 15a to 18a, inclusive, and is reported at 91 F. Supp. 872. The opinion of Chief Judge Biggs of the United States Court of Appeals for the Third Circuit, filed August 17, 1951, appears at R. 32 to 36, inclusive, and is reported at 190 F. 2d 991.

JURISDICTION.

The jurisdiction of this Court to review the final judgment of the United States Court of Appeals for the Third Circuit is provided by § 1254 (1) and § 2101 (c) of Title 28, U. S. Code.

STATEMENT OF THE CASE.

This is a libel in admiralty by Respondent, a merchant seaman, to recover wages, the value of transportation from Philadelphia, Pennsylvania, to Seattle, Washington, and "double wages" under R. S. § 4529, 46 U. S. C. § 596.

Respondent joined the crew of Petitioner's steamship "Stephen W. Kearny" as a messman on February 3, 1948 at Seattle, Washington. On April 21, 1948 while the vessel was in the South Pacific en route to the United States, an altercation took place between Respondent and one Wells Brandon, another crew member, during which Respondent without justification attacked Brandon with a knife and wounded him so severely that it was necessary to divert the vessel from its course in order to get Brandon to a hospital (R. 15a).

As a result of Respondent's attack upon Brandon and the diversion of the vessel, Petitioner incurred expenses and losses amounting to $1,691.55 (R. 15a), representing the cost of hospitalization, medical care, repatriation and subsistence for Brandon, and the vessel's operating expenses attributable to diversion of the "Stephen W. Kearny" to the Island of Tonga.

After his assault upon Brandon, Respondent was confined aboard the vessel, and performed no duties. No wages were credited to Respondent after the date of the assault, and as the issues ultimately developed upon trial, Respondent made no claim for wages subsequent to April 21, 1948 (R. 13a).

When the voyage terminated at Philadelphia, Pennsylvania on May 31, 1948, Respondent was removed from the vessel by federal police authorities. He was not present at the pay-off of the crew on June 3, 1948. On June 11, 1948, Respondent's attorney made a demand upon Petitioner by telephone for the payment of Respondent's wages, which demand was refused. Petitioner refused to pay Respondent because it set off the wages which had accrued to

Respondent prior to the stabbing incident against the expenses incurred by Petitioner as a result of Respondent's assault upon Brandon (R. 13a).

Respondent then filed the present libel in admiralty. As originally drawn, the libel claimed wages in the amount of $750.27 and in a second cause of action claimed the value of transportation from Philadelphia, Pennsylvania to Seattle, Washington and "double wages" for withholding the wages and value of transportation which Respondent alleged were due him. Certain other issues not here material were raised by the original pleadings, but were subsequently removed from the case by stipulation (R. 12a). Likewise, by stipulation, the net amount of wages claimed by Respondent was asserted to be $439.27, and Petitioner admitted that as of April 21, 1948, the date of the stabbing incident, there had accrued to Respondent net earnings in that amount, which Petitioner refused to pay. Petitioner denied that Respondent was entitled to receive the sum of $439.27, or any part thereof (R. 12a).

Petitioner, in its answer to the libel, set up as a separate, complete and affirmative defense, and by way of counterclaim, that Respondent had attacked Brandon, wounded him and necessitated diversion of the vessel, and that by reason of the assault, Petitioner had incurred certain expenses. Petitioner further averred that the wages which would otherwise have been due Respondent had been lawfully retained by Petitioner on account of its loss, and claimed the balance of its loss from Respondent (R. 9a-10a).

The case proceeded to trial in the District Court before Chief Judge Kirkpatrick, who rendered his opinion on May 19, 1950. The Trial Judge found that the "facts upon which [Petitioner's] affirmative defense and counterclaim are based are fully established by the evidence" (R. 15a). However, he awarded Respondent wages in the amount of $439.27, plus the value of transportation, but denied Respondent's claim for "double wages." On June 21, 1950, a final decree was entered in conformity with Judge Kirk-

patrick's opinion (R. 18a), from which Petitioner took an appeal to the United States Court of Appeals for the Third Circuit.

On August 17, 1951, the Court of Appeals, in an opinion by Chief Judge Biggs, affirmed the judgment of the District Court (R. 32-36).

The Court of Appeals held that Petitioner could not recoup or set off its loss contemporaneously with Respondent's claim because Congress, in R. S. § 4596, 46 U. S. C. § 701, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman" (R. 35). In further support of its conclusion, the Court of Appeals adverted to the status of seamen as "wards of the admiralty," and expressed reluctance to "wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman" (R. 34).

Petitioner filed with the Court of Appeals a petition for rehearing (R. 39-47), which was denied on September 27, 1951 (R. 48). Petitioner filed a petition for writ of certiorari on December 26, 1951, and this Court granted the petition on March 3, 1952 (R. 50).

SPECIFICATIONS OF ERROR.

Petitioner urges that the Court of Appeals for the Third Circuit erred in the following respects:

1. In rejecting the established rule of the general maritime law, that a shipowner, in an action for wages and other financial emoluments by a seaman, can set off or recoup the pecuniary loss sustained by the shipowner as the result of a deliberate act of the seaman in violation of the contract of employment.

2. In construing a penal statute, R. S. § 4596, as amended, 46 U. S. C. § 701, to govern the civil rights and liabilities of seaman and shipowner, *inter se*, in a dispute involving solely the amount of money owing by one to the other at the conclusion of the voyage.

3. In invoking the doctrine that "seamen are wards of the admiralty" to support its denial of the equitable right of set-off or recoupment to a shipowner against whom a monetary claim had been asserted by a seaman who had attacked with a deadly weapon and seriously wounded a shipmate, thereby causing loss to the shipowner almost three times as great as the amount of the seaman's claim.

ARGUMENT.

Summary of Argument.

Under the general maritime law, Petitioner, when faced with an action for wages and other financial emoluments brought by the Respondent, had a right to set off or recoup the pecuniary loss which Petitioner had sustained as the direct result of Respondent's unjustified act in violation of the contract of employment. The rule of the general maritime law which supports Petitioner's right has evolved upon the fundamental principles of equity and natural justice which have uniformly been regarded as controlling considerations in guiding the deliberations of courts of admiralty.

The Petitioner's right of set-off or recoupment is not limited to those instances where Congress has affirmatively authorized a "forfeiture" or "deduction" from the seaman's wages by statute. Specifically, the fact that R. S. § 4596, as amended, 46 U. S. C. § 701 treats certain types of assaults by seamen, and does not proscribe the conduct exhibited by the Respondent in the case at bar, is of no moment in determining the present controversy. R. S. § 4596 is not an exclusive catalog of circumstances under which a shipowner is entitled to civil redress. This is purely a penal statute, and is not determinative of the civil rights and liabilities of seaman and shipowner, *inter se*, in a dispute involving solely the amount of money owing by one to the other at the conclusion of the voyage. Thus the statutory law does not impair the rule of the general maritime law which supports the right which Petitioner presently asserts.

The Courts of Appeals invoked what it conceived to be a controlling consideration of policy—that seamen are "wards of the admiralty"—in support of its denial to Petitioner of the right of set-off or recoupment. Even if it be assumed, *arguendo*, that in the present era there persists

any genuine necessity for the application of the "wardship" doctrine under circumstances not present here, nevertheless, the present case presents a striking instance of misapplication of the doctrine. Here the doctrine was invoked to exculpate from civil liability a seaman who had without justification attacked with a deadly weapon and seriously wounded a shipmate, and in so doing, also saddled his innocent employer with pecuniary loss almost three times as great as the amount awarded the seaman. Under these circumstances, it is peculiarly appropriate that this Court should examine and correct the present misapplication of the wardship doctrine, and should delimit the field of its operation to situations where its impact is not offensive to fundamental notions of justice.

I. Under the General Maritime Law, Petitioner Had the Right to Recoup or Set Off the Pecuniary Loss Sustained by It as the Result of Respondent's Acts, Against the Financial Emoluments Which Would Otherwise Have Been Payable to Respondent.

If any principle be well established in the maritime law, it is this: that although courts of admiralty lack certain characteristic *powers* of courts of equity, nevertheless the admiralty courts in determining controversies within their jurisdiction, are guided by fundamental principles of equity and natural justice. *Rea v. The Eclipse*, 135 U. S. 599, 608; *Kellum v. Emerson*, Fed. Cas. No. 7,669; *The J. Oswald Boyd*, 53 F. Supp. 103, 106; *The Kalfarli*, 277 Fed. 391, 394.

Benedict, in his treatise on Admiralty (Sixth Edition, Vol. 2, page 30) expresses the principle thus:

> "The court is bound to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. This principle of the maritime law pervades the whole practice of the admiralty in the United States . . ."

To the same effect are the remarks of Mr. Justice Story in *The Virgin*, 33 U. S. 538, 550, wherein he observed that admiralty courts "in the exercise of their jurisdiction, are not governed by the strict rules of the common law, but act upon enlarged principles of equity."

Where a servant, by a deliberate act in violation of his contract of employment, causes financial loss to his master, it is but a matter of simple equity and justice that the servant, when presenting a claim for wages arising out of the contract of employment, should be held accountable to the master for the consequences of his wrongful act. Therefore it is quite natural, and consonant with the principles referred to above, that the general maritime law has established the rule that where a seaman, by a deliberate act in violation of his contract of employment, causes financial loss to the shipowner, the shipowner is entitled to recoup or set off its loss when faced with the seaman's claim for wages.

That is the right which Petitioner here asserts, and which was denied by the Courts below. The right is firmly rooted in the general maritime law, and its scope is clearly delineated by decisions involving a variety of factual situations. Reference to the decided cases confirms that the shipowner's right to mitigate its loss is founded upon the considerations of equity and natural justice which have become so deeply ingrained in the maritime law.

In *The T. F. Whiton*, Fed. Cas. No. 13,849 (D. C., S. D. N. Y., 1879), the second mate of a vessel filed a libel to recover the sum of $91.75 as wages allegedly due him. The vessel owner, by way of defense, averred that the libellant, during the course of the voyage, had committed an assault and battery upon the vessel's steward, with the result that the steward was severely injured and was in danger of losing his life. The vessel incurred a loss of $120.00 in sums paid for medical attention for the steward, and in the loss of the steward's services. The court held that

under these circumstances, there was nothing due and owing the libellant. The court said:

> "That such an act on the part of a seaman, whereby the vessel suffers damage or is put to expense, is to be considered in diminution of a claim for wages, has been often held (citing cases)."

The striking similarity between the facts of *The T. F. Whiton* and those of the case at bar is immediately apparent. Another case, *Macomber v. Thompson*, Fed. Cas. No. 8,919 (Circuit Court, Dist. Mass., 1833), stands for substantially the same proposition as does *The T. F. Whiton*. In *Macomber v. Thompson*, Judge Story was considering a factual situation in which a crew member had been insubordinate, had assaulted the second mate and the chief mate and had generally conducted himself in an insolent and mutinous manner. Judge Story said:

> "The charge thus set up in its actual presentation is certainly of a very high and aggravated nature. If it were completely borne out in its full extent by the evidence, it would call for the severe animadversion of the court. Some parts of the charge are, however, wholly unsupported, not only in form, but in substance."

The court then went on to point out that the shipowner had completely failed to establish that the losses which it attempted to set off against the wages claimed were directly attributable to the libellant's conduct, and therefore permitted only a partial set-off of the wages claimed. In the case at bar, there can be no question but that the amount of loss sustained by the Petitioner was the direct and proximate result of the Respondent's act in violation of the contract of employment.

There are many other analogous cases under the general maritime law where, in an action for wages by a seaman, the admiralty courts have permitted the vessel owner

to set off losses which it had sustained by reason of the libellant's dereliction of duty. In *The W. F. Babcock*, 85 Fed. 978 (C. A. 2, 1898), certain seamen left the vessel without cause, were arrested and taken before a Consul, and at the request of the master were delivered to the custody of Hawaiian police authorities. The shipowner was permitted to set off against their claimed wages the charges for their arrest and detention, the wages of their substitutes, and the amount which was necessarily paid by the vessel to the shore authorities as a penalty for the willful breakage of a shop window by the seamen on their way to the vessel under custody.

The Ellen Little, 246 Fed. 151 (D. C. Mass., 1916), was a case in which the libellant, an officer of the vessel, and other crew members took no measures to prevent the smuggling ashore of a stowaway, although libellant knew that the stowaway was aboard the vessel. Federal authorities detained the vessel for a few days, and other expenses were incurred by the ship as a result of the smuggling incident. The court deducted from the libellant's pay a proportion of the loss occasioned the shipowner commensurate with the libellant's fault as compared with that of other crew members, some of whom appeared to have been equally culpable.

In *Brown v. The Neptune*, Fed. Cas. No. 2,022 (D. C., E. D. Pa., 1829), the vessel owner was permitted to deduct from wages claimed, with respect to one libellant, the loss actually sustained by the vessel by reason of the libellant's wrongful absence from the ship, and with respect to another libellant, the vessel owner was permitted to deduct the value of an article belonging to the vessel which had been lost by his inattention and carelessness. In *Snell v. The Independence*, Fed. Cas. No. 13,139 (D. C., E. D. Pa., 1830), the shipowner was allowed to deduct a proportionate share of demurrage expenses occasioned by the libellant's refusal to perform duty, and also police costs and charges incurred as a result of the seaman's improper conduct while ashore.

See also *Scott v. Russell,* Fed. Cas. No. 12,546 (D. C., S. D. N. Y., 1848); and *The Marjory Brown,* 134 Fed. 999 (D. C., S. D. N. Y., 1905).

Two recent appellate decisions deal with the shipowner's right to set-off or recoupment under the general maritime law: *Oldfield v. The Arthur P. Fairfield,* 176 F. 2d 429, cert. den. 338 U. S. 879 (C. A. 9, 1949) and *Shilman v. United States,* 164 F. 2d 649, cert. den. 333 U. S. 837 (C. A. 2, 1947). Both of these cases will receive additional consideration in the following section of our argument. For present purposes; however, the following observations are relevant:

In the *Oldfield* case, a shipowner was permitted to set off against wages claimed, the seaman-libellant's pro rata share of a fine paid by the shipowner for release of the vessel, the fine having been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated.

The *Shilman* case involved an attempt by the United States, in its capacity as shipowner, to set off against wages claimed by a seaman, the amount of a fine imposed upon the seaman by a United States Army court martial in a foreign country. The court cited several cases (including *The T. F. Whiton, supra,* at 164 F. 2d 652) under the general maritime law wherein set-offs had been allowed with respect to expenses incurred on behalf of the ship in connection with the voyage. The court then proceeded to distinguish the case before it from those arising under the general maritime law on the ground that, in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the seaman's conduct. The clear implication of the *Shilman* opinion is that the Court of Appeals for the Second Circuit considered the cited cases under the general maritime law as authoritative and applicable upon their facts.

The foregoing cases stand, in general, for the proposition that a shipowner may set off against amounts otherwise owing to the seaman, the pecuniary loss sustained by the vessel as a direct result of the seaman's act in violation of the contract of employment. In particular, they hold that where a seaman has committed an assault upon another crew member, the set-off is allowable as to such losses as are proven to be the direct result of the assault: *The T. F. Whiton, supra,* and *Macomber v. Thompson, supra.* Under these authorities, and under the facts of the case at bar as found by the Trial Judge and approved by the Court of Appeals, it is clear that Petitioner had a right to recoup or set off its pecuniary loss when sued by the Respondent.

The rule laid down in the foregoing cases is by no means peculiar to the maritime law. Rather, these cases demonstrate that the maritime law, on this point, is no different from the law pertaining to the master-servant relationship in general. It is well settled that where a servant, by an act in violation of the contract of employment, causes pecuniary loss to his master, the servant is subject to *civil liability* to the master, and that the servant's civil liability may be successfully asserted by the master by way of set-off, counterclaim or recoupment, when the master is faced with an action for wages by the servant. *Restatement, Agency,* § 399 (g), (k); § 456; *Glennon v. Lebanon Mfg. Co.,* 140 Pa. 594; *Rosner v. Globe Valve Corporation,* 83 N. Y. S. (2nd) 496, aff'd. 87 N. Y. S. (2nd) 524; *Norris v. Cohen,* 223 Minn. 471, 27 N. W. (2nd) 277; *Greenleaf v. Huntingdon & B. T. M. R. & Coal Co.,* 3 F. R. D. 24; *Maratta v. Chas. H. Heer Dry Goods Co.,* 190 Mo. App. 420, 177 S. W. 718; 56 *Corpus Juris Secundum* (Master and Servant) § 77, 79 (pp. 500, 502).

II. The Court of Appeals Erred in Concluding That Petitioner Could Not Recoup or Set Off Its Loss Because Respondent's Conduct Did Not Fall Within Any of the Categories Enumerated in R. S. §4596, as Amended, 46 U. S. C. § 701. This Is a Penal Statute, and as Such Does Not Govern the Civil Rights and Liabilities of Seaman and Shipowner, Inter Se, in a Dispute Involving Solely the Amount of Money Owing by One to the Other at the Conclusion of the Voyage.

The cases under the general maritime law which we have previously discussed, and which establish the rule for which Petitioner here contends, were rejected by the Court of Appeals. In the view taken by the Court of Appeals, the case turned primarily upon the provisions of R. S. § 4596, as amended, 46 U. S. C. § 701.* The Court held that since Congress, in this statute, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman," it did not take the view "that such an assault must result in the loss of wages of the seaman assailant."

It is Petitioner's contention that the provisions of R. S. § 4596 are neither relevant nor controlling in the case at bar. R. S. § 4596 is a penal statute, but the question in the case at bar has nothing to do with crime and punishment. All that Petitioner asserts is the existence of a financial obligation to it on the part of Respondent, arising out of the employer-employee relationship, and the right to recoup or set off this obligation in the Respondent's suit which is founded upon the same relationship. In so doing, Petitioner is not attempting to punish or penalize Respondent; its object is not to impose discipline, but rather to secure recompense by an orderly adjudication of its civil rights and liabilities.

That R. S. § 4596 is penal in nature is readily apparent on its face. This statute lists eight categories of "offenses"

* Text is set out in Appendix annexed to this brief.

which a seaman can commit, for which he shall be "punished" in the designated manner. In many instances where the prescribed "punishment" includes loss of wages, the loss is described as a "forfeiture."

It is a familiar principle of statutory construction that the intent and meaning of the Legislature must be ascertained from the language of the statute, and the words used therein are to be given their ordinary meaning, unless the context shows that they are differently used. *A. Magnano Co. v. Hamilton*, 292 U. S. 40, 46-47; *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 36. Applying this principle to the statute under consideration, it is difficult to see how Congress could have used language more calculated to compel the conclusion that the purpose of the Act was solely to define certain types of criminal conduct and provide punishment therefor, and nothing more. Nothing in the Act indicates, either directly or by implication, that the Act was in any way intended to affect civil rights and liabilities.

The language of R. S. § 4610, 46 U. S. C. § 711, which provides, *inter alia*, for the recovery of "penalties and forfeitures" imposed by R. S. § 4596 is likewise significant. The reference to "conviction," "imprisonment," "penalty" and words of similar import in R. S. § 4610 clearly reflects the nature of R. S. § 4596 and the objects sought to be attained thereunder.

Reference to the derivation of R. S. § 4596 is likewise enlightening. This section was derived from § 51 of the Act of June 7, 1872, c. 322, 17 Stat. 273. § 51 of the Act of 1872 immediately follows the general caption "Discipline of Seamen," and contains provisions which are similar in many respects to those now embodied in R. S. § 4596.

The opinion of the Court of Appeals does not reveal to Petitioner any disagreement on the part of the Court with Petitioner's contention as to the nature of R. S. § 4596. The point of departure is the analysis of the issues involved in the present controversy. The Court of Appeals persists in treating the problem in the case at bar as one of "disci-

pline" or "penalty," rather than of who owes whom how much, in which latter category it properly belongs.

The proposition of the Court of Appeals that R. S. § 4596 codifies the only circumstances under which a seaman may be subject to civil liability to his employer was recently flatly rejected by the Court of Appeals for the Ninth Circuit in *Oldfield v. The Arthur P. Fairfield*, 176 F. 2d 429, certiorari denied 338 U. S. 879. In the *Oldfield* case, the Court of Appeals permitted a shipowner to set off against wages claimed, the libellant's pro rata share of a fine paid by the shipowner for release of the vessel, the fine having been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated. R. S. § 4596, in treating the subject of smuggling, deals only with acts of smuggling for which the offender had been convicted. In the *Oldfield* case, the libellant had not been tried for the offense of smuggling and *a fortiori* had not been convicted. Although § 4596 provides no "penalty" or "punishment" for the seaman under these circumstances, the Court of Appeals held that this fact cannot be construed as an abolition of the equitable right of recoupment belonging to the shipowner.

The Court of Appeals for the Second Circuit in *Shilman v. United States*, 164 F. 2d 649, certiorari denied 333 U. S. 837, likewise rejected by implication the contention that the shipowner is without a civil remedy where the seaman's conduct in violation of the contract of employment has caused pecuniary loss to the vessel's interests. The *Shilman* case involved an attempt by the United States, in its capacity as shipowner, to set off against wages claimed by a seaman, the amount of a fine imposed upon the seaman by a United States Army court martial in a foreign country. The Court of Appeals (at 164 F. 2d 651) first referred to various statutory provisions which authorized deductions from wages. It then cited several cases (including *The T. F. Whiton*, *supra*, at 164 F. 2d 652) under the general maritime law wherein set-offs had been

allowed with respect to expenses incurred on behalf of the ship in connection with the voyage. The Court then proceeded to distinguish the case before it from those arising under the general maritime law on the ground that, in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the seaman's conduct.

True it is that at one point in the *Shilman* opinion (at 164 F. 2d 650-651) the Court, after noting certain statutory provisions, said that the sections quoted "look towards payment to the seaman by his employer, at the termination of the employment, of all of his earned wages, without any deductions except those which are expressly authorized by statute." This language, however, is necessarily qualified by, and must be construed in the light of the Court's subsequent references to the aforementioned cases under the general maritime law, and the Court's distinction of the pending case from the factual situations therein. The clear implication of the *Shilman* opinion is that the Court of Appeals for the Second Circuit considered the cited cases under the general maritime law as authoritative and applicable upon their facts.

The Court of Appeals for the Ninth Circuit, in the *Oldfield* case, recognized this implication of the *Shilman* opinion. In reaching its conclusion, the Court in the *Oldfield* case noted (at 176 F. 2d 431) that the "right of recoupment has . . . recently been recognized again" in the *Shilman* case, and quoted extensively from that portion of the *Shilman* opinion which cited cases under the general maritime law supporting the right of the shipowner to set off losses incurred by the ship in connection with the voyage, as the result of the seaman's conduct.

The view taken by the Court in the *Oldfield* case as to the efficacy of the general maritime law, the statute notwithstanding, in controversies involving civil liabilities

finds a striking parallel in the construction given over a century ago by admiralty courts to the Act of July 20, 1790, c. 29, 1 Stat. 131 *et seq.* This Act contained, inter alia, the forerunner of the sections of R. S. § 4596 dealing with the offenses of absence from duty and desertion on the part of seamen.

Judge Story, in *Cloutman v. Tunison,* Fed. Cas. No. 2,907 (C. C., D. Mass., 1833), held unequivocally that the Act of 1790 merely created certain statutory offenses, and did not in any way impair the maritime law. "It does not supersede the general doctrine of the maritime law; or repeal it; but merely in a given case applies a particular rule *in poenam,* leaving the maritime law in all other cases in full efficiency" (at 5 Fed. Cas. p. 1094).

This principle was reaffirmed by Judge Story in *Coffin v. Jenkins,* Fed. Cas. No. 2,948 (C. C., D. Mass., 1844), wherein Judge Story referred to the desertion proscribed by the Act of 1790 as "an auxiliary statute desertion, distinguished from and independent of that of the maritime law . . ." (at 5 Fed. Cas. p. 1190). In 1883, Judge Addison Brown in *Welcome v. The Yosemite,* 18 Fed. 383, referred to the principle enunciated by Judge Story as "the settled construction" of the Act of 1790, reiterating that the provisions of the Act of 1790 "were designed to supplement the maritime law, and not to repeal or to supersede it" (at 18 Fed. 384). To the same effect, see *The John Martin,* Fed. Cas. No. 7,357 (D. C., E. D. Mich., 1870) and *The Osceola,* Fed. Cas. No. 10,602 (D. C., S. D. N. Y., 1846).

The provisions of R. S. § 4529, 46 U. S. C., § 596, referred to by the Court of Appeals in the case at bar are likewise irrelevant to the question presented. This statute provides for the recovery of "double wages" by the seaman in instances where his wages have been withheld "without sufficient cause" beyond certain stated periods after the termination of his engagement. This statute deals solely with the *time* for payment. It does not undertake to liquidate the amount, if any, owing to the seaman at the

termination of the voyage, nor does it even suggest a limitation upon the defenses, set-offs, or other claims which may be asserted by the shipowner in a suit by the seaman for wages after the termination of the voyage. It is worth noting, in passing, that this statute is in itself an effective deterrent to arbitrary or capricious refusal to pay a seaman's wages. The denial to the shipowner of the right of recoupment or set-off here asserted by Petitioner is clearly unnecessary to achieve that purpose.

In construing R. S. § 4596 to deny to Petitioner the right of set-off or recoupment, the Court of Appeals has disregarded the principle enunciated by this Court in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 437, that

> ". . . repeals by implication are not favored, and . . . a statute will not be construed as taking away a common-law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

To the same effect is *Shaw v. Merchants' National Bank of St. Louis*, 101 U. S. 557, wherein this Court pointed out that a statute will not be construed as altering the common law, further than its words import, nor as making any innovation upon the common law which it does not fairly express.

When R. S. § 4596 was enacted, the shipowner's right of set-off or recoupment, as the cases previously cited demonstrate, was already firmly established in the general maritime law, the common law of the sea. Nothing in the language of the statute, in the circumstances surrounding its enactment, or in the particular factual situation presented by the case at bar, indicates or even suggests that

the statute in any way affects the right presently asserted by Petitioner. The statute simply provides penal sanctions for certain offenses, whereas the general maritime law establishes the civil rights and liabilities of the seaman and shipowner, *inter se*.

Thus there is no conflict between the general maritime law and the statutory law; on the contrary, they are wholly compatible, and in a sense complementary, when one considers the obvious difference in underlying purpose between these two separate sources of law. Viewed in this light, their co-existence is natural, and detracts nothing from their mutual vitality. Each source of law is properly operative in its own sphere, and in the present case it is the general maritime law, fixing civil rights and liabilities, which is determinative of Petitioner's rights, and establishes that Petitioner was entitled to set off or recoup its pecuniary loss when sued by the Respondent.

III. The Court of Appeals Erred in Invoking the Doctrine That "Seamen Are Wards of the Admiralty" to Support Its Denial of the Equitable Right of Set-off or Recoupment to the Petitioner.

Certain considerations of policy appear to have influenced the Court of Appeals' construction of the statutes discussed in its opinion, and thus led to the decision ultimately reached. It is therefore necessary to appraise the validity of the policy advanced by the Court of Appeals in support of its reasoning if, as we have previously argued, that Court has disregarded well established rules of statutory construction *aliunde*.

The major premise of the Court of Appeals' dissertation on the policy underlying its decision seems to be that seamen are "wards of the admiralty." Born of the pronouncement of Justice Story in *Harden v. Gordon*, Fed. Cas. No. 6,047 (C. C., D. Maine, 1823), the "wardship"

doctrine pervades the maritime law. *Hume v. Moore-McCormack*, 121 F. 2d 336, 337; *The Arizona v. Anelich*, 298 U. S. 110, 123; *Warner v. Goltra*, 293 U. S. 155, 162; *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424, 431.

The wardship doctrine had its origin in a bygone era when service in the merchant marine was something akin to serfdom. Its object was to mitigate by judicial solicitude the intolerable conditions which attended maritime employment in the early days of American merchant shipping. Petitioner deems it unnecessary to discuss in this brief the abstract question of whether, in this day of enlightenment in employment relationships, there remains any genuine necessity for the application of the wardship doctrine in the maritime law. We may even assume, for present purposes, that in a controversy where the equities are closely divided between seaman and shipowner, the doctrine may be determinative of the result.

However, Petitioner earnestly submits that the doctrine can have no application whatever to the situation presented by the case at bar. Here the doctrine was invoked to exculpate from civil liability a seaman who had attacked with a deadly weapon and seriously wounded a shipmate. What is more, this exculpation saddled an innocent shipowner with financial loss almost three times as great as the amount awarded the seaman.

We cannot think that any conscientious guardian would countenance, much less lend tacit encouragement to this type of conduct by insulating his ward from the civil consequences of his acts, especially to the detriment of an innocent party. Certainly it is not part of the protective function of the guardian to prevent payment of that which is in good conscience owing by the ward. Nor do we think there can reasonably be ascribed to Congress the conscious intention of sanctioning condonation of the type of conduct here exhibited by Respondent. In short, a policy which was originally judicially formulated with the intention of

preventing overreaching of the seaman has here been made an instrument to achieve overreaching by the seaman.

At this point we would reiterate the proposition with which this brief commenced: that admiralty courts have traditionally exercised their jurisdiction upon basic principles of equity and natural justice. Their determinations are frequently the product of the exercise of a sound discretion based upon these principles. In the process of decision, therefore, it is not objectionable *per se* that considerations of policy should exert an influential force.

But when, as in this case, we have reached the point where "policy" is interpreted solely in terms of unrelenting, automatic adherence to a familiar maxim—"seamen are wards of the admiralty"—in disregard of the purpose behind the policy, and without regard for the fact that a palpable injustice is being wrought, an authoritative definition of the bounds of the legitimate application of the doctrine is imperatively required. Since the wardship doctrine has become, in effect, a substantive part of the maritime law, it is peculiarly appropriate that this Court delimit the field of its operation to situations where its impact is not offensive to fundamental notions of justice. Appropriately applied, the doctrine can subserve a justifiable purpose consistent with the cardinal principle of equity underlying the admiralty law. Indiscriminately applied, the doctrine debases the purpose which is the sole justification for its existence.

Petitioner therefore urges this Court to examine and correct the misapplication of the wardship doctrine which was instrumental in producing the result in the case at bar.

CONCLUSION.

For the reasons heretofore advanced, Petitioner submits that the judgments in the Courts below should be reversed and the case remanded with directions to enter judgment in favor of Petitioner and against Respondent.

Respectfully submitted,

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APPENDIX TO PETITIONER'S BRIEF.

Text of R. S. § 4596, as Amended, 46 U. S. C. § 701.

"Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by

being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of a sum of not more than twelve days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master, mate, pilot, engineer, or staff officer, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than twelve months."

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IN THE

Supreme Court of the United States

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

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IN THE

Supreme Court of the United States.

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT.

THE OPINIONS OF THE COURTS BELOW.

The opinion of Chief Judge Kirkpatrick of the United States District Court for the Eastern District of Pennsylvania was filed May 19, 1950, and is reported at 91 F. Supp. 872.

The opinion of the United States Court of Appeals for the Third Circuit by Chief Judge Biggs was filed on August 17, 1951, and is reported at 190 F. (2d) 991.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Whether the shipowner is precluded from making any forfeiture, deduction, set-off or charge against a merchant seaman's wages where not authorized by statute.

STATUTES INVOLVED.

The legislation pertaining to the seaman's wages, inter alia, had its historical origin in the Act of 1790.[1] The general pattern and scheme for the regulation and control of the seaman's wages are contained in the Act of 1872,[2] which embodies substantially all of the provisions enacted for the benefit, protection and discipline of the seamen, and for the benefit and control of the shipowners. That Act pre-empted the field of seamen's wages and regulated the engagement and discharge of the seamen, the payment and disposition of seamen's wages, the immunity of seamen's wages from attachment or arrestment and the circumstances justifying deductions from seamen's wages. The text of the relevant statutes is set forth in the appendix to this brief.

STATEMENT OF THE CASE.

This action was originally brought by the respondent, a merchant seaman, to recover earned wages withheld from him and waiting time under R. S. § 4529, 46 U. S. C. § 596.

Respondent, Matthew Johnson, was engaged as a messman on petitioner's S. S. "Stephen W. Kearney" on February 3, 1948. He served until April 21, 1948, when an altercation occurred between another crew member and himself, in the course of which respondent inflicted a knife wound on the other necessitating medical care and attention (R. 13, 14). Johnson was relieved from duty and thereafter turned over to the United States Marshal for trial (R. 20). He was tried on June 11, 1948, in the United States District Court for the Eastern District of Pennsylvania, upon a criminal indictment arising out of the stabbing, and was acquitted by the jury upon a plea of self-defense.

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1. Act of July 20, 1790, c. 29, 1 Stat. 131.
2. Act of June 7, 1872, c. 322, 17 Stat. 262.

Demand was made for payment of the wages earned during the period from February 3rd to April 21st, 1948, but petitioner refused to make payment and deducted the alleged unliquidated expenses relating to the hospitalization, medical care, repatriation, and subsistence for the wounded seaman, and for the expense for the deviation of the vessel, pilotage, manifests and harbor dues, extra fuel for the vessel and extra food for the crew (R. 13). The petitioner, Isbrandtsen Company, Inc., also refused to pay the wounded seaman (Brandon) and deducted these same expenses from his wages (R. 23, 24). The Captain of the vessel did not "log" Johnson in connection with the altercation and made no entry in the official log book imposing any fine or penalty or charges for the expenses incurred (R. 22). The master did not make the decision to forfeit the wages, but that decision was made at the petitioner's office and the master simply accepted it without question (R. 23).

The libel was defended on the ground that the expenses incurred as a result of the stabbing were properly forfeited from wages and therefore were the proper subject of a claim of set-off.

The trial judge awarded the earned wages to the respondent on the ground that payment of the seaman's wages was mandatory under federal statute and only those deductions could be made which were specifically authorized by statute. There being no provision in the federal legislation authorizing or permitting any deductions under circumstances such as at bar, the trial court concluded that petitioner could not legally withhold the earned wages. The trial judge, however, denied the claim for waiting time upon the ground that these earned wages were not withheld without reasonable cause.

The Court of Appeals affirmed the trial court on the same basis and held that any other result would be contrary to the existing legislation and tantamount to judicial legislation.

SUMMARY OF ARGUMENT.

When a seaman signs a contract of shipment he surrenders his liberty and freedom during the entire period of the contract. In the real sense of the word, the Master becomes a trustee for the personal safety of all of the men under his command and for all of the wages and emoluments which they earn during the voyage. While shore employees are able to provide sustenance for their families from wages weekly paid, seamen must abide the end of the voyage before full payment of their earnings can be demanded or paid. Because of the very nature of their calling, seamen are prey in every port for the scheming and the unscrupulous and were it not for the statutory provision prohibiting more than a limited payment of wages prior to the termination of the voyage, and the statutory provisions limiting deductions and prohibiting attachments, seamen would themselves tend to dissipate their wages and become harnessed with debts to the great prejudice, not only of the seamen, but also of their dependents.

Under the maritime law, the courts have exercised a solicitude for seamen which can only be properly understood by an examination of the entire history relating to seamen. The courts were quick to adopt the "wardship theory" thereby throwing a protective cloak around seamen to immunize them from sharp practices and overreaching on the part of all of those seeking unfair advantage. Beyond this, the Congress has enacted legislation to insure complete protection for this important class of employees. The first expression of Congressional policy appears in the Act of 1790[3] which dealt with only a few problems and was a limited forerunner of later and more comprehensive legislation. In some of the early lower court cases, set-offs against wages were permitted in certain instances. Later decisions took a conflicting view. The early decisions were used by the shipowners as a pretext for seizing every provocation to withhold seamen's

3. Act of July 20, 1790, c. 29, 1 Stat. 131.

wages. These abuses grew to such proportion that the Congress was forced to take drastic action and adopted the Shipping Commissioner's Act of 1872.[4] This legislation pre-empted the entire field and undertook to regulate the payment and the protection of seamen's wages under all circumstances. This enactment abrogated all previous judicial expressions on the right of set-off against wages, irrespective of their validity. The early cases which petitioner suggests formulated its version of the rule of set-offs, were lower court cases prior to the Act of 1872 and long before this Court's decision in *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239. This Court did not deal with the problem until after the Act of 1872 in the *Wilder* case.

The Act of 1872 (Section 596 of Title 46, U. S. C.) requires payment within twenty-four hours after the discharge of the cargo, or within four days after the seaman is discharged, whichever first happens, and failure to make such payment entitles the seaman to two days' pay for each day that the Master fails to make payment. Section 601 of Title 46, U. S. C. prohibits the attachment or arrestment of seamen's wages by any court, except for the support of a wife or children. Section 701 of Title 46, U. S. C. sets forth some of the circumstances under which deductions may be made from a seaman's wages where the seamen engage in certain types of misconduct. The foregoing provisions and other sections of this Act make it clear that the Congress was legislating to regulate and control the payment of and the deduction from seamen's wages in all aspects. The legislation is, in essence, remedial in character, as is indicated in the title of the Act, 17 Stat. 262. While several of the provisions impose penalties involving imprisonment for misconduct of the seamen, those provisions which authorize deductions from the wages, control the civil rights of the shipowner and seamen, since the forfeitures are payable to the shipowner (46 U. S. C. § 706).

4. Act of June 7, 1872, c. 322, 17 Stat. 262.

The fact that there are several penalty provisions involving prison sentences against the seamen, does not change the basic character of this remedial legislation. Any possible forfeiture of wages must necessarily be strictly limited to the Act and the legislation must be construed in consonance with the long established rule that seamen are "wards of the admiralty." The suggestion that seamen are any less wards of the admiralty today than they were many years ago, has repeatedly been rejected by this Court. If anything, there is more reason today for the courts to exercise extraordinary solicitude for the seamen than ever before. *Robertson v. Baldwin*, 165 U. S. 275; *Cortes v. Baltimore Insular Line*, 287 U. S. 367.

The prohibition against attachment of seamen's wages (46 U. S. C. § 601) first appearing in the Act of 1872, essentially disposes of the problem before this Court. In *Wilder v. Inter-Island Steam Navigation Co., supra*, this Court held that the attachment of a seaman's wages to satisfy a judgment is prohibited by Section 601. In the instant case, had the shipowner obtained judgment against the Respondent in an independent action for the damage done, Section 601 and the *Wilder* case would have prohibited satisfaction of that judgment by attachment of the seaman's wages in its own hands. Without judgment, the present attempted attachment of wages is a deliberate circumvention of Section 601 and, a fortiori, cannot be sustained.

Finally, in view of the existing extensive legislation on seamen's wages and other seamen's rights, there is indicated a clear intention on the part of the Congress to reserve for itself the solution of the problems arising in this field. It is suggested, consistent with the policy recently expressed in *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corporation*, 342 U. S. 282 (Adv. Rep.), that the extension of the right of set-off urged by the petitioner, might, for reasons of policy, be considered by this Court as falling more properly within the function of the Congress.

ARGUMENT.

The Shipowner May Not Make Any Deduction From Any Seaman's Wages Except Where Specifically Authorized by Federal Statute.

The early days of our Merchant Marine saw many deplorable eras in the handling of seamen and their compensation for services. Aside of the fact that over-zealous ship's officers inflicted excessive and unnecessary physical punishment, the masters indulged in many abuses for the purpose of depriving the seamen of their hard-earned wages. For example, in all too many instances ship masters abused seamen to the point of forcing a desertion and thereby enabling the shipowner to forfeit the seamen's wages.[5]

With the view of effecting some relief from the prevailing discreditable practices, the Congress enacted the first seamen's statute, which provided generally that the master must enter into a contract of shipment with the crew; that the seamen were entitled to a percentage of earned wages at each port of call unless otherwise provided by agreement and that wages must be paid at a specified time at the end of the voyage;[6] that there be a medicine chest and certain minimum stores and provisions aboard the vessel; and that a seaman who failed to report on board would forfeit from his wages one day's pay for every hour he was late, and, where the seaman deserted, all of his pay and personal effects were subject to forfeiture, and he was liable to arrest and forcible return to

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5. Norris, *The Law of Seamen* (1951), at page 366:

"One of the abuses leading to the enactment of the Shipping Commissioner's Act was the proclivity of certain owner-masters of making conditions so intolerable for the mariner that he was virtually forced to desert at a foreign port, thus forfeiting whatever wages were due him. . . ."

6. This section did not provide a "2 for 1" penalty for improper withholding of wages. Accordingly, although the seaman had a right to sue for the wages, this was no deterrent to the shipowner, since if he lost the suit, he was not required to pay any more than he was obligated to pay at the end of the voyage.

the vessel. This statute was a limited forerunner of the present seamen's statutes and did not in any sense legislate with respect to all of the problems of seamen's wages.

Because the Act of 1790 covered only a very limited phase of the subject matter relating to the seamen's wages, the admiralty courts were confronted with the necessity of making determinations without the benefit of legislative mandate. Although the admiralty courts did not recognize a general right of set-off in admiralty, *The Hudson* (S. C., N. Y.), Fed. Cas. No. 6830 (12 Fed. Cas. 805, 806); *Bains v. The James and Catherine* (C. C., Pa.), Fed. Cas. No. 756 (2 Fed. Cas. at page 422), in several cases the lower courts permitted a set-off against seamen's wages for misconduct, in order to effect a solution to the problem. *The Mentor* (C. C., Mass.), Fed. Cas. No. 9427. This assumption of general equitable jurisdiction is open to serious question in view of the fact that courts of admiralty do not have general equitable jurisdiction, *Schoenamsgruber v. Hamburg American Line*, 294 U. S. 454, 457. Moreover, in cases involving maintenance and cure, which has been held coextensive with the right to wages, courts of admiralty have denied the right to set-off upon the basis of the "wardship theory." *Taylor v. Calmar S. S. Co.* (E. D., Pa.), 35 F. Supp. 335; *Cornell v. Gulf Oil Co.* (E. D., Pa.), 35 F. Supp. 448.

Because the Act of 1790 was incapable of stemming the tides of abuses which either short-changed the seamen or left them completely without funds after long periods of service, and frequently in ports distant from their homes, and because the early decisions invited further abuses, the Congress took the problem in hand and legislated a program expressly for the "protection of seamen" and covered every aspect of the seamen's wages, thus superseding the earlier decisions. That Act, which is generally known as the Shipping Commissioner's Act of 1872,[7] set out the conditions of hiring and discharging of the seamen, the time

7. Act of June 7, 1872, c. 322, 17 Stat. 262.

for payment of wages, the penalty for failure to pay within the prescribed period of time, and the limited circumstances under which deductions could be made from the seamen's wages. Some of the background leading to the legislation was considered by this Court in *Patterson v. The Bark Eudora*, 190 U. S. 169. This Court stated as follows, at page 175:

> "If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard, and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed."

The Congressional intent to legislate with regard to every phase of the seamen's wages is clearly manifest from an examination of the several provisions. Section 596 of Title 46 provides:

> "The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa,

> within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; . . ."

This Section is the first expression on the part of Congress covering every type of shipping contract which puts teeth into the law compelling prompt and full payment of seamen's wages.

By Section 601 of Title 46 Congress demonstrated its intention that seamen's wages should be held inviolate even from court order, except for the support of a wife or minor children. The necessary import of this section is that neither the shipowner nor any other person can directly or indirectly obtain or arrest any part of a seaman's wages. In *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239, a party obtained a judgment against a seaman and attempted to attach the seaman's wages in order to obtain satisfaction, on the basis of a local statute permitting this practice. The Supreme Court refused to permit any deduction from the seaman's wages and foreclosed the application of any local statute permitting satisfaction of a judgment by attachment of a seaman's wages, and this conclusion was reached from an interpretation of Section 601 of Title 46.

Certainly, if the shipowner had obtained judgment upon its claim in the instant case in an independent suit or had reduced its counterclaim in this suit to judgment, Section 601 and the *Wilder* case would have prohibited satisfaction of that judgment by attachment of this seaman's wages even though these funds remained in the hands of the shipowner. It follows that the shipowner's un-

liquidated claim can have no greater dignity than if it had been reduced to judgment; and if the judgment could not be satisfied out of the wages, it is indisputably clear that the unliquidated claim may likewise not be satisfied out of wages. Reduced to its essentials, the problem here is whether the shipowner can accomplish by indirection what it is forbidden to do by the statute, and the answer to this must be clearly in the negative in view of the *Wilder* case. What has been said is, of course, upon the assumption that there is no other provision in the federal statutes authorizing a set-off against respondent's wages, as the courts below found.

Section 701 of Title 46 outlines various circumstances which entitle the shipowner to withhold any sums from seamen's wages. These provisions relate generally to cases involving certain types of misconduct on the part of the seamen, such as desertion, disobedience to orders, smuggling and the like. Section 654 et seq. of Title 46 permits deductions where the members of the crew improperly detain the vessel upon an unfounded claim of unseaworthiness. Other provisions in the statutes permit deductions for purchases from the ship's slop chest, 46 U. S. C. § 670, and allotments to next-of-kin, 46 U. S. C. § 599 (b) (c). It is thus apparent that none of the statutory provisions justify a deduction under the facts in the instant case and, under these circumstances, the petitioner was unwarranted in withholding payment of respondent's wages.

In *Eldridge v. Isbrandtsen Company, Inc.* (E. D., Pa.), 89 F. Supp. 718, the shipowner deducted approximately $10,000.00 in seamen's wages at the end of the voyage. A libel claiming wages and penalty was filed and the Isbrandtsen Company answered by charging desertion in a foreign port (forfeiting wages earned prior to that time under 46 U. S. C. § 701) and further asserting the right to "set-off" the consequential damages suffered by reason of the delay of the vessel resulting from the seamen's alleged refusal to rejoin the vessel. The Court recognized that

the charge of desertion, if proven, might justify the forfeiture under 46 U. S. C. § 701 (1), and might constitute a defense to the libel, but sustained libellant's exceptions to the "set-off" for consequential damages since it was not a forfeiture or deduction authorized by statute, at page 720:

> ". . . We are aware of no decided cases in which an attempt was made, as in this action, to assert desertion not only as a defense to a libel, but, in addition thereto, claim the right of deduction as a set-off for consequential damages for delay due to desertion. *We feel that the only deductions which may be made from a seaman's wages are those specifically authorized by the Act. If respondent should be allowed to assert a set-off in this manner, it would be indirectly nullifying the intendments of the statutes for the protection of seamen. . . .*"[8] (Emphasis supplied.)

In *Shilman v. United States*, 2d Cir., 164 F. (2d) 649, a merchant seaman employed by the United States was tried before a special court martial for unlawfully taking an adding machine from an office at Tunisia, and sentenced, inter alia, to pay a fine of $200.00 to the United States. The United States deducted this fine from his wages whereupon he filed a libel for its recovery. The Government urged that it had the right to set off this fine against the earned wages. Judge Hand of the Court of Appeals for the Second Circuit overruled this defense upon the ground *that there cannot be any deduction from a seaman's wages except where specifically authorized by statute.*[9] Judge

8. The *Eldridge* case proceeded to trial on January 24, 1951, before District Judge Grim and, at the conclusion of the trial, the Court awarded wages to the seaman as claimed and $5,000.00 in addition under the "2 for 1" statute, 46 U.S.C. § 596 (not reported).

9. Petitioner cites the *Shilman* case in support of its contentions and points to a single paragraph in that opinion, 164 F. (2d) 649, 652, where the Court summarizes the early cases cited by the shipowner (most of which have been cited in the petitioner's brief), and then states that they are inapplicable. We respectfully submit that a mere listing of cases cited by the unsuccessful litigant coupled with a statement by the Court that these cases are not relevant neither suggests nor infers that the Court cited these cases with approval.

Augustus Hand first reviewed some of the statutes relating to seamen's wages and then stated:

> (p. 650) *"The above sections look towards payment to the seaman by his employer, at the termination of the employment, of all of his earned wages, without any deductions except those which are expressly authorized by statute."* (Emphasis supplied.)

In the instant case, petitioner concedes, as it must, that its claim to set-off is not authorized by any statutory provision. It is submitted that this admission is fatal to petitioner's case and requires an affirmance of the decisions below. The Act of 1872 was designed specifically to protect seamen's wages in every instance, except under specified circumstances. None of those circumstances exist in this case. Petitioner would have the Court invoke a new rule in lieu of the existing statutory scheme and thus open the door to the flood of abuses which provoked the enactment of the Act of 1872. The expressed Congressional purpose and considerations of policy should impel this Court to reject petitioner's contention.

In *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corporation,* 342 U. S. 282 (Adv. Rep.), this Court was recently called upon to create a rule of contributionship between joint tort feasors in the maritime field. In view of existing legislation, much more limited in scope than the legislation involving seamen's wages, this Court declined as a matter of policy to judicially create a rule of contribution, being of the view that the problem was properly the function of the Congress. The principles there enunciated are equally applicable here. And this Court might consider whether for reasons of policy, the extension of the right to set-off urged by the petitioner might more properly be left to the Congress.

In passing, it is noted that petitioner urges this Court to abandon the so-called "wardship theory" as being obsolete and no longer necessary. The impropriety of this

suggestion is indicated by the many decisions of this Court, almost to the present day, holding without exception, that seamen must be regarded as wards of the admiralty and the courts must be ever vigilant to protect the seamen against any inroads by the employers. *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424; *Waterman S. S. Corp. v. Jones*, 318 U. S. 724; *Garrett v. Moore McCormack Co.*, 317 U. S. 239; *Warner v. Goltra*, 293 U. S. 155.

Mr. Justice Cardoza said, in *Cortes v. Baltimore Insular Line*, 287 U. S. 367, at page 377:

> ". . . The conditions at sea differ widely from those on land, and the diversity of conditions breeds diversity of duties. This court has said that 'the ancient characterization of seamen as "wards of admiralty" is even more accurate now than it was formerly.'"

The court below recognized the clear applicability of the wardship theory in connection with the judicial interpretation of statutes and said, 190 F. (2d) 991, 993:

> "We think it unnecessary to discuss here all of the causes sufficient to warrant the withholding of wages. *It is clear that Sections 4529 and 4596 must be liberally construed in favor of seamen, wards of the admiralty.* See Garrett v. Moore-McCormack Company, 317 U. S. 239, 63 S. Ct. 246, 87 L. Ed. 239, and Waterman Steamship Corporation v. Jones, 318 U. S. 724, 63 S. Ct. 930, 87 L. Ed. 1107. *A court will be loath to wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman.*" (Emphasis supplied.)

In *Wilder v. Inter-Island Steam Navigation Co.*, 211 U. S. 239, this Court, in interpreting the legislation involved in this case, reiterated the applicability of the wardship theory and stated at page 246:

> ". . . But we are of opinion that this statute (forbidding attachment of seamen's wages) is not to be

too narrowly construed, but rather to be liberally interpreted with a view to effecting the protection intended to be extended to a class of persons whose improvidence and prodigality have led to legislative provisions in their favor, and which has made them, as Mr. Justice Story declared, 'the wards of the admiralty.'" Harden v. Gordon, 2 Mason, 541, Fed. Cas. No. 6,047." (Material in parentheses added.)

It follows that seamen must be regarded as wards of the admiralty no less today than they were in the early days of our history. The application of this doctrine to the wage statutes suggests that this Court most liberally construe this legislation in favor of the seamen.

The Wage Statutes Are Not Exclusively Penal or Criminal Statutes But Control as Well the Civil Rights Between Shipowner and Seamen.

Although there are several provisions in the Act of 1872 which may be regarded as penal in character, the Act as a whole is expressly for the "protection of seamen" and, therefore, must be construed as a remedial statute. Petitioner overlooks all of the provisions of the Act of 1872 and refers only to Section 701. Reference has already been made to the other sections of the Act from which it clearly appears that Congress intended to protect the wages of the seamen from all encroachments by the ship masters or others. Ignoring all of these remedial features of the Act, petitioner directs the Court's attention to the penalty provisions in Section 701 and argues from this that the legislation is penal and, therefore, must be cut adrift from the civil rights and liabilities of the parties. An examination of Section 701 discloses that there are eight provisions, the first three of which provide only for forfeiture of wages or personal effects, while the last five provide for imprisonment or forfeiture. This section of

the Act, therefore, is penal in part and remedial in its other parts.

Crawford, in "The Construction of Statutes," points out that this type of statute is both penal and remedial (or civil), at page 106, as follows:

> "Obviously, a statute may be both remedial and penal, or even penal in one part and remedial in another. Sometimes it is not easy to decide whether a statute is penal or remedial. The substance and effect rather than mere form is the decisive factor, although if a penalty is provided for, the statute is, at least, penal in character. *The courts do, however, recognize one obvious distinction between a penalty or forfeiture occurring to the benefit of an aggrieved person and a penalty prescribed as a criminal punishment. In the former instance, the statute is regarded as remedial and the penalty is recoverable by a private action.*" (Emphasis supplied.)

See also, *Brady v. Daly*, 175 U. S. 148, 155-157. The seamen's statutes provide that all forfeitures of wages other than those for desertion "shall be for the benefit of the master or owner by whom the wages are payable." R. S. § 4604, 46 U. S. C. § 706. Accordingly, since the forfeitures of R. S. § 4596 and the other sections inure to the benefit of and are payable to the shipowner, these provisions are remedial in nature and control the civil rights of the parties.

Thus, an examination of Section 701 together with the other wage statutes refutes the contention of petitioner that the statute, being penal, is irrelevant in determining what wages are due to this seaman and, on the contrary, supports the view that insofar as the provisions relate to the disposition of the seamen's wages, they are remedial in character and determine the civil rights of the parties.

CONCLUSION.

The entire scheme of the federal legislation is designed to insure prompt payment of seamen's wages and to eliminate the many abuses which resulted in the extraordinary hardships visited upon the seamen and their families because of the deductions from earnings. While normally in shore employment the worker is able to provide sustenance for his family from his compensation weekly received, the seaman must await the very end of his employment before he can provide the necessities urgently needed by his dependents. In order to prevent the dissipation of the earnings in the course of the voyage, Congress curtailed the right of the seaman to obtain more than a limited amount of any sums due him prior to the termination of the contract. This was for the purpose of protecting the seaman and his family against his own improvidence.

In a like manner, the Congress enacted the strongest kind of legislation to protect those same funds against invasion by shipowners or other persons and authorized deductions only under limited specified circumstances. This legislation has well served to reduce the many cases of hardship inflicted upon seamen and their families in situations where wages earned over long periods of service were withheld or forfeited in some manner. It would appear that the petitioner in pursuing this relatively trivial claim is intent not upon the recovery of the particular funds involved in this isolated case, to be reimbursed for its expenses, but upon the destruction of a wholesome piece of legislation which the Congress adopted after many sad experiences. Sound public policy and the clear mandate of the legislation involved impel the conclusion that the courts below were correct and should be sustained.

Respectfully submitted,

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APPENDIX TO RESPONDENT'S BRIEF.

STATUTES FOR DEDUCTION OR FORFEITURE OF SEAMEN'S WAGES.

R. S. § 4522; 46 U. S. C. § 576:

"... If any seaman shall neglect to render himself on board the vessel for which he has shipped at the time mentioned in such memorandum without giving twenty-four hours' notice of his inability to do so, and if the master of the vessel shall, on the day in which such neglect happened, make an entry in the log book of such vessel of the name of such seaman, and shall in like manner note the time that he so neglected to render himself after the time appointed, then every such seaman shall forfeit for every hour which he shall so neglect to render himself one-half of one day's pay, according to the rate of wages agreed upon, to be deducted out of the wages. If any such seaman shall wholly neglect to render himself on board of such vessel, or having rendered himself on board shall afterwards desert, he shall forfeit all of his wages or emoluments which he has then earned ..."

R. S. § 4525; 46 U. S. C. § 592:

"... But in all cases of wreck or loss of vessel, proof that any seaman or apprentice has not exerted himself to the utmost to save the vessel, cargo, and stores shall bar his claim (for wages)." (Words in parentheses supplied.)

Act of June 26, 1884, c. 121, § 10, 23 Stat. 55, as amended; 46 U. S. C. § 599:

"(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents,

parents, wife, sister, or children, or for deposits to be made in an account opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof.

"(c) No allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made, or by directing the payments to be made to a savings bank or a United States postal savings depository in an account maintained in his name."

R. S. § 4557; 46 U. S. C. § 654:

". . . But if the complaint of the crew (referring to 46 U. S. C. § 653, complaint of vessel's unseaworthiness) shall appear upon the report and judgment to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages of the complaining seamen. . . ." (Material in parentheses supplied.)

R. S. § 4558; 46 U. S. C. § 655:

"If, after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, he shall forfeit any wages

that may be due him. This section shall not apply to fishing or whaling vessels or yachts."

R. S. § 4562; 46 U. S. C. § 659:

"The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul directing the inquiry may officially certify."

R. S. § 4566; 46 U. S. C. § 663:

"If the officer to whom any such complaint in regard to the provisions or the water is made certifies in such statement that there was no reasonable ground for such complaint, each of the parties so complaining shall forfeit to the master or owner his share of the expense, if any, of the survey. This section shall not apply to fishing or whaling vessels or yachts."

Act of June 26, 1884, c. 121, § 11, 23 Stat. 56; 46 U. S. C. § 670:

"Every vessel mentioned in section 666 of this title shall also be provided with a slop chest, which shall contain a complement of clothing for the intended voyage for each seaman employed, including boots or shoes, hats or caps, underclothing and outer clothing, oiled clothing, and everything necessary for the wear of a seaman; also a full supply of tobacco and blankets. Any of the contents of the slop chest shall be sold, from time to time, to any or every seaman applying therefor, for his own use, at a profit not exceeding 10 per centum of the reasonable wholesale

value of the same at the port at which the voyage commenced. . . ."

R. S. § 4596, as amended; 46 U. S. C. § 701:

"Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of a sum of not more than twelve days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master, mate, pilot, engineer, or staff officer, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than twelve months."

R. S. § 4604, as amended; 46 U. S. C. § 706:

"All clothes, effects, and wages which, under the provisions of sections 541-543, 545-549, 561, 562, 564-571, 574-578, 591-597, 600, 602-605, 621-628, 641-643, 644, 645, 651-660, 661-669, 674,679, 682-685, 701-710, and 711-713 of this title, are forfeited for desertion, shall be applied, in the first instance, in payment of the expenses occasioned by such desertion, to the master or owner of the vessel from which the desertion has

taken place, and the balance, if any, shall be paid by the master or owner to any shipping commissioner resident at the port at which the voyage of such vessel terminates; and the shipping commissioner shall account for and pay over such balance to the judge of the district court within one month after the commissioner receives the same, to be disposed of by him in the same manner as is prescribed for the disposal of the money, effects, and wages of deceased seamen. Whenever any master or owner neglects or refuses to pay over to the shipping commissioner such balance, he shall be liable to a penalty of double the amount thereof, recoverable by the commissioner in the same manner that seamen's wages are recovered. *In all other cases of forfeiture of wages, the forfeiture shall be for the benefit of the master or owner by whom the wages are payable.*" (Emphasis supplied.)

R. S. § 4605; 46 U. S. C. § 707:

"Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offense by any competent tribunal, and rightfully punished therefor, by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding $15, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment."

R. S. § 4603; 46 U. S. C. § 705:

"Any question concerning the forfeiture of, or deductions from, the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding the offense in respect of which such question arises, though made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding."

STATUTES FOR PROTECTION OR DISPOSITION OF SEAMAN'S WAGES.

R. S. § 4524; 46 U. S. C. § 591:

"A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens."

R. S. § 4525; 46 U. S. C. § 592:

"No right to wages shall be dependent on the earning of freight by the vessel; but every seaman or apprentice who would be entitled to demand and receive any wages if the vessel on which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same of the master or owner in personam, notwithstanding that freight has not been earned. . . ."

R. S. § 4526, as amended; 46 U. S. C. § 593:

"In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681 of this title. . . ."

R. S. § 4527; 46 U. S. C. § 594:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the

master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

R. S. § 4529, as amended; 46 U. S. C. § 596:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; . . ."

R. S. § 4530, as amended; 46 U. S. C. § 597:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage

is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. *And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in the preceding section:* Provided further, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: . . ." (Emphasis supplied.)

Act of June 26, 1884, c. 121, §10, 23 Stat. 55; 46 U. S. C. § 599:

"(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. . . . The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. . . ."

R. S. § 4535; 46 U. S. C. § 600:

"No seaman shall, by any agreement other than is provided by sections 541-543, 545-549, 561, 562, 564-

571, 574-578, 591-597, 600, 602-605, 621-628, 641-643, 644, 645, 651-660, 661-669, 674-679, 682-685, 701-710, and 711-713 of this title, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of such sections, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative."

Act of March 4, 1915, c. 153, § 12, 38 Stat. 1169; 46 U. S. C. § 601:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. . . ."

R. S. § 4537; 46 U. S. C. § 602:

"No sum exceeding $1 shall be recoverable from any seaman, by any one person, for any debt contracted during the time such seaman shall actually belong to any vessel, until the voyage for which such seaman engaged shall be ended."

R. S. § 4548; 46 U. S. C. § 605:

"Moneys paid under the laws of the United States, by direction of consular officers or agents, at any foreign port or place, as wages, extra or otherwise, due American seaman, shall be paid in gold or its equiva-

lent, without any deduction whatever, any contract to the contrary notwithstanding."

R. S. § 4538; 46 U. S. C. § 621:

"Whenever any seaman or apprentice belonging to or sent home on any merchant vessel, whether a foreign-going or domestic vessel, employed on a voyage which is to terminate in the United States, dies during such voyage, the master shall take charge of all moneys, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of such clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book, and cause it to be attested by the mate and one of the crew, containing the following particulars:

"First. A statement of the amount of money so left by the deceased.

"Second. In case of a sale, a description of each article sold, and the sum received for each.

"Third. A statement of the sum due to deceased as wages, and the total amount of deductions, if any, to be made therefrom."

R. S. § 4539; 46 U. S. C. § 622:

"In cases embraced by section 621 of this title, the following rules shall be observed:

"First. If the vessel proceeds at once to any port in the United States, the master shall, within forty-eight hours after his arrival, deliver any such effects remaining unsold, and pay any money which he has taken charge of or received from such sale, and the balance of wages due to the deceased, to the shipping commissioner at the port of destination in the United States.

"Second. If the vessel touches and remains at some foreign port before coming to any port in the

United States, the master shall report the case to the United States consular officer there, and shall give to such officer any information he requires as to the destination of the vessel and probable length of the voyage; and such officer may, if he considers it expedient so to do, require the effects, money, and wages to be delivered and paid to him, and shall, upon such delivery and payment, give to the master a receipt; and the master shall within forty-eight hours after his arrival at his port of destination in the United States produce the same to the shipping commissioner there. Such consular officer shall, in any such case, indorse and certify upon the agreement with the crew the particulars with respect to such delivery and payment.

"Third. If the consular officer does not require such payment and delivery to be made to him, the master shall take charge of the effects, money, and wages, and shall, within forty-eight hours after his arrival at his port of destination in the United States, deliver and pay the same to the shipping commissioner there.

"Fourth. The master shall, in all cases in which any seaman or apprentice dies during the voyage or engagement, give to such officer or shipping commissioner an account, in such form as they may respectively require, of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified by an entry in the official log book, if there be any; and by such other vouchers, if any, as may be reasonably required by the officer or shipping commissioner to whom the account is rendered.

"Fifth. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United States, the

shipping commissioner shall grant to the master a certificate to that effect. No officer of customs shall clear any foreign-going vessel without the production of such certificate."

R. S. § 4540; 46 U. S. C. § 623:

(This section sets forth penalties upon the master for failure to dispose of the wages and personal effects of a deceased seaman in accordance with previous sections.)

R. S. § 4552; 46 U. S. C. § 644:

"The following rules shall be observed with respect to the settlement of wages:

"First. Upon the completion before a shipping commissioner, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seamen assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

"Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.

"Third. A copy of such release, certified under the hand and seal of such shipping commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

"Fourth. In cases in which discharge and settlement before a shipping commissioner are required no payment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

"Fifth. Upon payment being made by a master before a shipping commissioner, the shipping commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned."

R. S. § 4580, as amended; 46 U. S. C. § 682:

"Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any Act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in sections 658, 683, 684, and 685 of this title."

R. S. § 4581, as amended; 46 U. S. C. § 683:

"If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States for the full amount thereof. The master shall provide any seaman

so discharged with employment on a vessel agreed to by the seaman, or shall provide him with one month's extra wages, if it shall be shown to the satisfaction of the consul that such seaman was not discharged for neglect of duty, incompetency, or injury incurred on the vessel. If the seaman is discharged by voluntary consent before the consul, he shall be entitled to his wages up to the time of his discharge, but not for any further period. If the seaman is discharged on account of injury or illness, incapacitating him for service, the expenses of his maintenance and return to the United States shall be paid from the fund for the maintenance and transportation of destitute American seaman. . . ."

R. S. § 4582, as amended; 46 U. S. C. § 684:

"Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50."

R. S. § 4583, as amended; 46 U. S. C. § 685:

> "Whenever on the discharge of a seaman in a foreign country by a consular officer on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and, upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such seaman one month's wages over and above the wages due at the time of discharge, and to provide him with adequate employment on board some other vessel, or provide him with a passage on board some other vessel bound to the port from which he was originally shipped, or to the most convenient port of entry in the United States, or to a port agreed to by the seaman."

Act of June 26, 1884, c. 121, § 18, 23 Stat. 57; 46 U. S. C. § 189:

> "The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: Provided, That this provision shall not prevent any claimant from joining all the owners in one action; *nor shall the same apply to wages due to persons employed by said shipowners.*" (Emphasis supplied.)